

(22,458.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 472.

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY, PLAINTIFF IN ERROR,

vs.

WILBUR I. CRAM.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

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No. 15148.

CRAM

CHICAGO, B. & Q. R. Co.

Pleas Before the Supreme Court of the State of Nebraska at a Term Thereof Begun and Holden at the Capitol, in the City of Lincoln, in said State, on the 20th Day of September, 1910.

Present: Hon. Manoah B. Reese, Chief Justice.
Hon. John B. Barnes, Judge.
Hon. Charles B. Letton, Judge.
Hon. Jacob Fawcett, Judge.
Hon. William B. Rose, Judge.
Hon. Jesse L. Root, Judge.
Hon. Samuel H. Sedgwick, Judge.

Attest:

H. C. LINDSAY, *Clerk.*

Be it remembered, That on the 12th day of April, 1907, there was filed in the office of the Clerk of the said Supreme Court a certain Transcript, in the words and figures following, to-wit:

TRANSCRIPT.

In the District Court of Garfield County, Nebraska.

WILBER I. CRAM, Plaintiff,

vs.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, a Corporation,
Defendant.

Petition.

2 The plaintiff for first cause of action against the defendant, alleges:

1.

That at all times hereinafter mentioned, the defendant was, and now is, a corporation duly organized and existing under and by virtue of the laws of the State of Iowa, and did, and now does, own and operate a railroad between Burwell and South Omaha, in the State of Nebraska, as a public carrier of passengers and freight for hire, in said state of Nebraska; that defendant's said line of railroad runs through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora was, and is, a main line 125 miles in length, and the portion of its said railroad

extending between Aurora and Burwell was, and is, a branch 104 miles in length.

2.

That, on the first day of July 1905, the plaintiff delivered to the defendant, and it received, at its railroad station at Burwell Nebraska, one car load of live stock, belonging to plaintiff, to be safely and securely conveyed by the defendant, over its said line of railroad, from Burwell to South Omaha, Nebraska, within the time provided by statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant;

That the defendant's train conveying said car load of live stock, left Burwell for South Omaha at 9 o'clock A. M. of said day but did not arrive at South Omaha, the point of destination, until 12.45 A. M. on July 3rd 1905, and the time consumed in said journey was 24 hours and 3 minutes longer than permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$240.00 as provided for by statute.

3 The plaintiff complains of the defendant and for 2nd cause of action against it alleges:

1.

That at all of the times hereinafter mentioned, the defendant was, and now is, a corporation duly organized and existing under and by virtue of the laws of the state of Iowa, and did and now does, own and operate a railroad between Burwell and South Omaha, in the state of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad runs through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora was, and is, a main line one hundred and twenty-five miles in length, and the portion of its said railroad extending between Aurora and Burwell was, and is, a branch line one hundred and four miles in length.

2.

That, on the 6th day of July 1905, the plaintiff delivered to the defendant, and it then received, at its railroad station in Burwell, Nebraska, one full car load of live stock, belonging to plaintiff, to be safely and securely conveyed by the defendant, over its said line of railroad, from Burwell to South Omaha Nebraska, within the time provided for by statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train conveying said car load of live stock, left Burwell, for South Omaha, at 12.45 o'clock P. M. of said day but did not arrive at South Omaha, the point of destination, until 6.25 o'clock A. M. on July 7th 1905, and the time consumed in said journey was 2 hours and 3 minutes longer than permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$20.00, as provided for by statutes.

4

3.

The plaintiff complains of the defendant and for 3rd cause of action against it alleges:

1.

That at all of the times hereinafter mentioned, the defendant was, and now is, a corporation duly organized and existing under and by virtue of the laws of the state of Iowa and did, and now does, own and operate a railroad between Burwell and South Omaha, in the state of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad runs through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora was, and is, a main line one hundred and twenty-five miles in length and the portion of its said railroad extending between Aurora and Burwell was, and is, a branch line one hundred and four miles in length.

2.

That, on the 13th day of July, 1905, the plaintiff delivered to the defendant, and it then received, at its railroad station in Burwell, Nebraska, one full car load of live stock, belonging to plaintiff, to be safely and securely conveyed by the defendant over its said line of railroad, from Burwell to South Omaha, Nebraska, within the time provided for by statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train, conveying said car load of live stock, left Burwell, for South Omaha at 12.45 o'clock P. M. of said day but did not arrive at South Omaha the point of destination, until 6 o'clock A. M.

5 on July 14th 1905, and the time consumed in said journey was one hour and thirty-eight minutes longer than permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$10.00, as provided for by statutes.

4.

The plaintiff complains of the defendant and for the 4th cause of action against it alleges:

1.

That at all of the times hereinafter mentioned, the defendant was, and now is, a corporation duly organized and existing under and by virtue of the laws of the state of Iowa and did, and now does, own and operate a railroad between Burwell and South Omaha, in the state of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad runs through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora was, and is, a main line one hundred and twenty-five miles in length, and the portion of its said railroad extending between Aurora and Burwell was, and is, a branch line one hundred and four miles in length.

2.

That, on the 14th day of July 1905, the plaintiff delivered to the defendant, and it then received, at its railroad station in Burwell, Nebraska, one full car load of live stock, belonging to plaintiff, to be safely and securely conveyed by the defendant, over its said line of railroad, from Burwell to South Omaha, Nebraska, within the time provided for by statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train, conveying said car load of live stock, left Burwell, for South Omaha, at 9 o'clock A. M. of said day but did not arrive at South Omaha, the point of destination, until 6.15 o'clock A. M. on July 15th, 1905, and the time consumed in said journey was five hours and thirty-eight minutes longer than permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$50.00, as provided for by statute.

5.

The plaintiff complains of the defendant and for 5th cause of action against it alleges:

1.

That at all of the times hereinafter mentioned, the defendant was, and now is, a corporation duly organized and existing under and by virtue of the laws of the state of Iowa and did, and now, does, own and operate a railroad between Burwell and South Omaha, in the state of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad runs through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora was, and is, a main line one hundred and twenty-five miles in length, and the portion of its railroad extending between Aurora and Burwell was, and is, a branch line one hundred and four miles in length.

2.

That, on the 17th day of July 1905, the plaintiff delivered to the defendant, and it then received at its railroad station in Burwell Nebraska, one full car load of live stock, belonging to plaintiff, to be safely and securely conveyed by the defendant, over its said line of railroad, from Burwell to South Omaha, Nebraska, within the time provided for by the statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train, conveying said car load of live stock, left Burwell, for South Omaha, at 12.45 o'clock P. M. of said day but did not arrive at South Omaha, the point of destination, until 6.36 o'clock A. M. on July 18th 1905, and the time consumed in said journey was two hours and eight minutes longer than permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$20.00 as provided for by statute.

6.

The plaintiff complains of the defendant and for the 6th cause of action against it alleges:

1.

That at all of the times hereinafter mentioned, the defendant was and now is, a corporation duly organized and existing under and by virtue of the laws of the state of Iowa and did, and now does, own and operate a railroad between Burwell and South Omaha, in the state of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad runs through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora was, and is, a main line one hundred and twenty-five miles in length and the portion of its said railroad extending between Aurora and Burwell was, and is a branch line one hundred and four miles in length.

2.

That, on the 20th day of July 1905, the plaintiff delivered to the defendant, and it then received, at its railroad station in Burwell, Nebraska, one full car load of live stock belonging to plaintiff to be safely and securely conveyed by the defendant, over its said line of railroad, from Burwell to South Omaha, Nebraska, within the time provided for by statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train conveying said car load of live stock left Burwell, for South Omaha, at 12.45 o'clock P. M. of said day but did not arrive at South Omaha, the point of destination, until 6.38 o'clock A. M. on July 21st 1905, and the time consumed in said journey was two hours and sixteen minutes longer than permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$20.00, as provided for by statute.

7.

The plaintiff complains of the defendant and for 7th cause of action against it alleges:

1.

That at all of the times hereinafter mentioned, the defendant was, and now is, a corporation duly organized and existing under and by virtue of the laws of the state of Iowa and did and now does, own and operate a railroad between Burwell and South Omaha, in the state of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad runs through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora was, and is, a main line one hundred and twenty-five miles in length and the portion of its said railroad extending between Aurora and Burwell was, and is, a branch line one hundred and four miles in length.

2.

That, on the 21st day of July 1905, the plaintiff delivered to the defendant, and it then received, at its railroad station in Burwell, Nebraska, one full car load of live stock belonging to plaintiff to be safely and securely conveyed by the defendant, over its said line of railroad, from Burwell to South Omaha, Nebraska, within the time provided for by statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train conveying said car of live stock, left Burwell, for South Omaha at 9 o'clock A. M. of said day but did not arrive at South Omaha, the point of destination, until 6.55 o'clock A. M. on July 22nd 1905, and the time consumed in said journey was six hours and eighteen minutes longer than permitted by the statute of Nebraska, to the damage of the plaintiff in the sum of \$60.00 as provided for by statute.

8.

The plaintiff complains of the defendant and for 8th cause of action against it alleges:

10

1.

That at all of the times hereinafter mentioned, the defendant was, and now is, a corporation duly organized and existing under and by virtue of the laws of the state of Iowa and did, and now does, own and operate a railroad between Burwell and South Omaha, in the state of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad runs through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora was, and is, a main line one hundred and twenty-five miles in length and the portion of its said railroad extending between Aurora and Burwell was, and is, a branch line one hundred and four miles in length.

2.

That on the 24th day of July 1905, the plaintiff delivered to the defendant, and it then received at its railroad station in Burwell, Nebraska, two full car loads of live stock, belonging to plaintiff, to be safely and securely conveyed by the defendant, over its said line of railroad, from Burwell to South Omaha, Nebraska, within the time provided by the statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train conveying said car loads of live stock left Burwell, for South Omaha, at 12.45 o'clock P. M. of said day but did not arrive at South Omaha, the point of destination, until 7.32 o'clock A. M. on July 25th 1905, and the time consumed in said journey was three hours and ten minutes longer than permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$60.00 as provided for by statute.

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9.

The plaintiff complains of the defendant and for 9th cause of action against it alleges:

1.

That at all of the times hereinafter mentioned, the defendant was, and now is, a corporation duly organized and existing under and by virtue of the laws of the state of Iowa and did, and now does own and operate a railroad between Burwell and South Omaha, in the state of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad runs through the city of Aurora in said state; that the portion of its said railroad extending between South Omaha and Aurora was, and is, a main line one hundred and twenty-five miles in length, and the portion of its said railroad extending between Aurora and Burwell was and is, a branch line one hundred and four miles in length.

2.

That, on the 28th day of July 1905, the plaintiff delivered to the defendant, and it then received, at its railroad station in Burwell Nebraska, one full car load of live stock, belonging to plaintiff, to be safely and securely conveyed by the defendant, over its said line of railroad, from Burwell to South Omaha, Nebraska, within the time provided for by statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train conveying said car of live stock, left Burwell, for South Omaha, at 9 o'clock A. M. of said day but did not arrive at South Omaha, the point of destination, until 8.40
12 o'clock A. M. on July 29th 1905, and the time consumed in said journey was seven hours and three minutes longer than permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$70.00, as provided for by statute.

10.

The plaintiff complains of the defendant and for 10th cause of action against it alleges:

1.

That at all of the times hereinafter mentioned, the defendant was, and now is, a corporation duly organized and existing under and by virtue of the laws of the state of Iowa and did and now does, own and operate a railroad between Burwell and South Omaha, in the State of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad runs through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora was, and is, a main line one hundred and twenty-five miles in length and the portion of its said railroad extending between Aurora and Burwell was, and is, a branch line one hundred and four miles in length.

2.

That, on the 31st day of July, 1905, the plaintiff delivered to the defendant, and it then received, at its railroad station in Burwell, Nebraska, one full car load of live stock, belonging to plaintiff, to be safely and securely conveyed by the defendant, over its said line of railroad, from Burwell to South Omaha, Nebraska, within the

13 time provided for by statute, in the consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train, conveying said car load of live stock, left Burwell, for South Omaha, at 12.45 o'clock P. M. of said day but did not arrive at South Omaha, the point of destination, until 6.15 o'clock A. M. on August 1st, 1905, and the time consumed in said journey was one hour and fifty-three minutes longer than that permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$10.00, as provided for by statute.

11.

The plaintiff complains of the defendant and for 11th cause of action against it alleges:

1.

That at all of the times hereinafter mentioned, the defendant was, and now is, a corporation duly organized and existing under and by virtue of the laws of the state of Iowa and did and now does, own and operate a railroad between Burwell and South Omaha, in the State of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad runs through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora was, and is, a main line one hundred and twenty-five miles in length and the portion of its said railroad extending between Aurora and Burwell was, and is, a branch line one hundred and four miles in length.

2.

That, on the 7th day of August, 1905, the plaintiff delivered to the defendant, and it then received, at its railroad station in Burwell, Nebraska, one full car load of live stock, belonging to plaintiff, to

14 be safely and securely conveyed by the defendant, over its said line of railroad, from Burwell to South Omaha, Nebraska, within the time provided for by statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train, conveying said car load of live stock, left Burwell, for South Omaha, at 12.45 o'clock P. M. of said day but did not arrive at South Omaha, the point of destination, until 5.35 o'clock — M. on August 8th, 1905, and the time consumed in said journey was one hour and thirteen minutes longer than that permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$10.00, as provided for by statute.

12.

The plaintiff complains of the defendant and for 12th cause of action against it alleges:

1.

That at all of the times hereinafter mentioned, the defendant was, and now is, a corporation duly organized and existing under and by virtue of the laws of the state of Iowa and did, and now does, own and operate a railroad between Burwell and South Omaha, in the State of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad runs through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora was and is, a main line one hundred and twenty-five miles in length, and the portion of its said railroad extending between Aurora and Burwell was, and is, a branch line one hundred and four miles in length.

15

2.

That, on the 10th day of August, 1905, the plaintiff delivered to the defendant, and it then received, at its railroad station in Burwell, Nebraska, one full car load of live stock, belonging to plaintiff, to be safely and securely conveyed by the defendant over its said line of railroad, from Burwell to South Omaha, Nebraska, within the time provided for by statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train conveying said car load of live stock, left Burwell, for South Omaha at 12.45 o'clock P. M. of said day but did not arrive at South Omaha, the point of destination, until 5.35 o'clock A. M. on Aug. 11, 1905, and the time consumed in said journey was one hour and 13 minutes longer than permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$10.00 as provided for by statute.

13.

The plaintiff complains of the defendant and for 13th cause of action against it alleges:

1.

That at all of the times hereinafter mentioned, the defendant was, and now is, a corporation duly organized and existing under and by virtue of the laws of the state of Iowa and did, and now does, own and operate a railroad between Burwell and South Omaha, in the

16. State of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad runs through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora was, and is, a main line one hundred and twenty-five miles in length, and the portion of its said railroad extending between Aurora and Burwell was, and is, a branch line one hundred and four miles in length.

2.

That, on the 17th day of August 1905, the plaintiff delivered to the defendant, and it then received, at its railroad station in Burwell, Nebraska, one full car load of live stock, belonging to plaintiff, to be safely and securely conveyed by the defendant, over its said line of railroad, from Burwell to South Omaha, Nebraska, within the time provided for by statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train conveying said car load of live stock, left Burwell, for South Omaha, at 12.45 o'clock P. M. of said day but did not arrive at South Omaha, the point of destination, until 11.40 o'clock A. M. on August 18th, 1905, and the time consumed in said journey was seven hours and eighteen minutes longer than permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$70.00 as provided for by statute.

14.

The plaintiff complains of the defendant and for 14th cause of action against it alleges:

1.

That at all times hereinafter mentioned, the defendant was, and now is, a corporation duly organized and existing under and
17 by virtue of the laws of the state of Iowa and did, and now does, own and operate a railroad between Burwell and South Omaha, in the state of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad runs through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora was, and is, a main line one hundred and twenty-five miles in length, and the portion of it- said railroad extending between Aurora and Burwell was, and is a branch line one hundred and four miles in length.

2.

That, on the 18th day of August 1905, the plaintiff delivered to the defendant, and it then received, at its railroad station in Burwell, Nebraska, one full car load of live stock, belonging to plaintiff, to be safely and securely conveyed by the defendant, over its said line of railroad, from Burwell to South Omaha, Nebraska, within the time provided for by statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train conveying said car load of live stock, left Burwell, for South Omaha, at 9 o'clock A. M. of said day but did not arrive at South Omaha, the point of destination until 9.50 o'clock A. M. on August 19th 1905, and the time consumed in said journey was nine hours and thirteen minutes longer than permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$90.00, as provided for by the statute.

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15.

The plaintiff complains of the defendant and for 15th cause of action against it alleges:

1.

That at all of the times hereinafter mentioned, the defendant was, and now is, a corporation duly organized under and by virtue of the laws of the state of Iowa and did, and now does, own and operate a railroad between Burwell and South Omaha, in the state of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad runs through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora was, and is, a main line one hundred and twenty-five miles in length, and the portion of its said railroad extending between Aurora and Burwell was, and is a branch line one hundred and four miles in length.

2.

That, on the 21st day of August 1905, the plaintiff delivered to the defendant, and it then received, at its railroad station in Burwell, Nebraska, two full car loads of live stock, belonging to plaintiff, to be safely and securely conveyed by the defendant, over its said line of railroad, from Burwell to South Omaha, Nebraska, within the time provided for by statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train, conveying said car loads of live stock, left Burwell, for South Omaha, at 12.45 o'clock P. M. of said day

but did not arrive at South Omaha, the point of destination until 9.55 o'clock A. M. on August 22nd, 1905, and the time consumed in said journey was five hours and thirty-three minutes longer than permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$100.00, as provided for by statute.

16.

The plaintiff complains of the defendant and for 16th cause of action against it alleges:

1.

That at all of the times hereinafter mentioned, the defendant was, and now is, a corporation duly organized and existing under and by virtue of the laws of the state of Iowa and did, and now does, own and operate a railroad between Burwell and South Omaha, in the state of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad runs through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora was, and is, a main line one hundred and twenty-five miles in length, and the portion of its said railroad extending between Aurora and Burwell was, and is, a branch line one hundred and four miles in length.

2.

That, on the 24th day of August, 1905, the plaintiff delivered to the defendant, and it then received, at its railroad station in Burwell, Nebraska, one full car load of live stock, belonging to plaintiff, to be safely and securely conveyed by the defendant, over its said line of railroad, from Burwell to South Omaha, Nebraska, within the time provided for by statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train, conveying said car load of live stock, left Burwell for South Omaha, at 12.45 o'clock P. M. of said day but did not arrive at South Omaha, the point of destination, until 8.50 o'clock A. M. on August 25th 1905 and the time consumed in said journey was four hours and twenty-eight minutes longer than permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$40.00, as provided for by law.

17.

The plaintiff complains of the defendant and for 17th cause of action against it alleges:

1.

That at all of the times hereinafter mentioned, the defendant was, and now is, a corporation duly organized and existing under and by virtue of the laws of the state of Iowa and did, and now does, own and operate a railroad between Burwell and South Omaha, in the state of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad runs through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora was, and is, a main line one hundred and twenty-five miles in length, and the portion of its said railroad extending between Aurora and Burwell was, and is a branch line one hundred and four miles in length.

2.

That, on the 25th day of August 1905, the plaintiff delivered to the defendant, and it then received, at its railroad station in Burwell, Nebraska, one full car load of live stock, belonging to plaintiff, to be safely and securely conveyed by the defendant, over its said line of railroad, from Burwell to South Omaha, Nebraska, within the time provided for by statute, in the consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train conveying said car load of live stock, left Burwell for South Omaha, at 9 o'clock A. M. of said day but did not arrive at South Omaha the point of destination, until 7.20 o'clock A. M. on August 26th 1905, and the time consumed in said journey was six hours and forty-three minutes longer than permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$60.00, as provided for by statute.

18.

The plaintiff complains of the defendant and for 18th cause of action against it alleges:

1.

That at all of the times hereinafter mentioned, the defendant was, and now is, a corporation duly organized and existing under and by virtue of the laws of the state of Iowa and did, and now does, own and operate a railroad between Burwell and South Omaha, in the state of Nebraska, as a public carrier of passengers and freight for hire in said state: that the defendant's said line of railroad runs through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora was and is, a main line one hundred and twenty-five miles in length, and the portion of its said railroad extending between Aurora and Burwell, was, and is, a branch line one hundred and four miles in length.

2.

That, on the 28th day of August 1905, the plaintiff delivered to the defendant, and it then received, at its railroad station in Burwell Nebraska, one full car load of live stock, belonging to plaintiff, to be safely and securely conveyed by the defendant, over its said line of railroad, from Burwell to South Omaha, Nebraska, within the time provided for by statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train conveying said car load of live stock, left Burwell, for South Omaha, at 12.45 o'clock P. M. of said day but did not arrive at South Omaha, the point of destination, until 6.15 o'clock A. M. on August 29th 1905, and the time consumed in said journey was one hour and fifty-three minutes longer than permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$10.00, as provided for by statute.

19.

23 The plaintiff complains of the defendant and for 19th cause of action against it alleges:

1.

That at all of the times hereinafter mentioned, the defendant was, and now is, a corporation duly organized and existing under and by virtue of the laws of the state of Iowa and did, and now does, own and operate a railroad between Burwell and South Omaha, in the State of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad runs through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora was, and is, a main line one hundred and twenty-five miles in length, and the portion of its said railroad extending between Aurora and Burwell was, and is, a branch line one hundred and four miles in length.

2.

That, on the 4th day of September 1905, the plaintiff delivered to the defendant, and it then received, at its railroad station in Burwell,

Nebraska, one full car load of live stock, belonging to plaintiff, to be safely and securely conveyed by the defendant, over its said line of railroad, from Burwell to South Omaha, Nebraska, within the time provided for by statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train conveying said car load of live stock, left Burwell, for South Omaha, at 12.45 o'clock P. M. of said day but did not arrive at South Omaha, the point of destination, until 1 24 o'clock P. M. on September 5th 1905, and the time consumed in said journey was eight hours and thirty-eight minutes longer than permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$80.00, as provided for by statute.

20.

The plaintiff complains of the defendant and for 20th cause of action against it alleges:

1.

That at all of the times hereinafter mentioned, the defendant was, and now is, a corporation duly organized and existing under and by virtue of the laws of the state of Iowa and did, and now does own and operate a railroad between Burwell and South Omaha, in the state of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad runs through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora was, and is, a main line one hundred and twenty-five miles in length, and the portion of its said railroad extending between Aurora and Burwell was, and is, a branch line one hundred and four miles in length.

2.

That, on the 7th day of September 1905, the plaintiff delivered to the defendant, and it then received, at its railroad station in Burwell, Nebraska, one full car load of live stock, belonging to plaintiff, to be safely and securely conveyed by the defendant, over its said line of railroad, from Burwell to South Omaha, Nebraska, within 25 the time provided for by statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train, conveying said car load of live stock, left Burwell, for South Omaha, at 12.45 o'clock P. M. of said day but did not arrive at South Omaha, the point of destination, until 8.20 o'clock A. M. on September 8th 1905, and the time consumed in said journey was three hours and fifty-eight minutes longer than permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$30.00, as provided for by the statute.

21.

The plaintiff complains of the defendant and for 21st cause of action against it alleges:

1.

That at all of the times hereinafter mentioned, the defendant was, and now is, a corporation duly organized and existing under and by virtue of the laws of the state of Iowa and did, and now does, own and operate a railroad between Burwell and South Omaha, in the state of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad runs through the city of Aurora, in said state, and the portion of its said railroad extending between South Omaha and Aurora was, and is, a main line one hundred and twenty-five miles in length and the portion of its said railroad extending between Aurora and Burwell was, and is, a branch line one hundred and four miles in length.

26

2.

That, on the 8th day of September 1905, the plaintiff delivered to the defendant, and it then received, at its railroad station in Burwell, Nebraska, one full car load of live stock, belonging to plaintiff, to be safely and securely conveyed by the defendant, over its said line of railroad, from Burwell to South Omaha, Nebraska, within the time provided for by statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train conveying said car load of live stock, left Burwell, for South Omaha at 9 o'clock A. M. of said day but did not arrive at South Omaha, the point of destination, until 4.55 o'clock A. M. on September 11th 1905, and the time consumed in said journey was fifty-two hours and eighteen minutes longer than permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$520.00, as provided for by statute.

22.

The plaintiff complains of the defendant and for 22nd cause of action against it alleges:

1.

That at all of the times mentioned hereinafter, the defendant was, and now is, a corporation duly organized and existing under and by virtue of the laws of the state of Iowa and did, and now does, own and operate a railroad between Burwell and South Omaha, in the State of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad runs through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora was, and is, a main line one hundred and twenty-five miles in length, and the portion of its said railroad extending between Aurora and Burwell was, and is, a branch line one hundred and four miles in length.

2.

That, on the 11th day of September 1905, the plaintiff delivered to the defendant, and it then received, at its railroad station in Burwell Nebraska, one full car load of live stock, belonging to plaintiff,

to be safely and securely conveyed by the defendant, over its said line of railroad, from Burwell to South Omaha, Nebraska, within the time provided for by statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train, conveying said car load of live stock, left Burwell, for South Omaha, at 12.45 o'clock P. M. of said day but did not arrive at South Omaha, the point of destination, until 10.12 o'clock A. M. on September 12th, 1905, and the time consumed in said journey was five hours and fifty minutes longer than permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$50.00, as provided for by statute.

23.

The plaintiff complains of the defendant and for 23rd cause of action against it alleges:

28

1.

That at all of the times hereinafter mentioned, the defendant was, and now is, a corporation duly organized and existing under and by virtue of the laws of the state of Iowa and did, and now does, own and operate a railroad between Burwell and South Omaha, in the State of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad runs through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora, was, and is, a main line one hundred and twenty-five miles in length, and the portion of its said railroad extending between Aurora and Burwell was, and is, a branch line one hundred and four miles in length.

2.

That, on the 21st day of September 1905, the plaintiff delivered to the defendant, and it then received, at its railroad station in Burwell, Nebraska, one full car load of live stock, belonging to plaintiff, to be safely and securely conveyed by the defendant, over its said line of railroad, from Burwell to South Omaha, Nebraska, within the time provided for by statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train, conveying said car load of live stock, left Burwell, for South Omaha, at 12.45 o'clock P. M. of said day but did not arrive at South Omaha, the point of destination, until

8.10 o'clock A. M. on September 22nd 1905, and the time consumed in said journey was three hours and forty-eight minutes longer than permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$30.00, as provided for by statute.

24.

The plaintiff complains of the defendant and for 24th cause of action against it alleges:

1.

That at all of the times hereinafter mentioned, the defendant was, and now is, a corporation duly organized and existing under and by virtue of the laws of the state of Iowa and did, and now does, own and operate a railroad between Burwell and South Omaha, in the state of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad runs through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora was, and is, a main line one hundred and twenty-five miles in length, and the portion of its said railroad extending between Aurora and Burwell, was, and is, a branch line one hundred and four miles in length.

2.

That, on the 25th day of September 1905, the plaintiff delivered to the defendant, and it then received, at its railroad station in Burwell, Nebraska, one full car load of live stock, belonging to plaintiff, to be safely and securely conveyed by the defendant, over its said line of railroad, from Burwell to South Omaha, Nebraska, within the time provided for by statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train, conveying said car load of live stock, left Burwell, for South Omaha, at 12.45 o'clock P. M. of said day but did not arrive at South Omaha, the joint of destination, until 9 o'clock 35 M. on September 26th 1905, and the time consumed in said journey was five hours and eight minutes longer than permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$50.00, as provided for by statute.

25.

The plaintiff complains of the defendant and for 25th cause of action against it alleges:

1.

That at all of the times hereinafter mentioned, the defendant was, and now is, a corporation duly organized and existing under and by virtue of the laws of the state of Iowa and did, and now does, own and operate a railroad between Burwell and South Omaha, in the state of Nebraska, as a public carrier of passengers and freight for hire in said state; that the defendant's said line of railroad run through the city of Aurora in said state, and the portion of its said railroad extending between South Omaha and Aurora was, and is, a main line one hundred and twenty-five miles in length, and the portion of its said railroad extending between Aurora and Burwell was, and is, a branch line one hundred and four miles in length.

2.

That, on the 2nd day of October 1905, the plaintiff delivered to the defendant, and it then received, at its railroad station in Burwell,

Nebraska, one full car load of live stock, belonging to plaintiff, to be safely and securely conveyed by the defendant over its said line of railroad, from Burwell to South Omaha, Nebraska, within the time provided for by statute, in consideration of the regular freight charges therefor which the plaintiff paid to the defendant; that the defendant's train, conveying said car load of live stock, left Burwell, for South Omaha, at 11 o'clock A. M. of said day but did not arrive at South Omaha, the point of destination until 8.25 o'clock A. M. on October 3rd, 1905, and the time consumed in said journey was five hours and forty-eight minutes longer than permitted by the statutes of Nebraska, to the damage of the plaintiff in the sum of \$50.00 as provided for by statute.

There is now due from the defendant to the plaintiff the sum of \$1770, for damages so as aforesaid sustained by him on his several causes of action, no part of which has been paid, for which sum with interest and costs of suit the plaintiff prays judgment.

E. J. CLEMENTS,
Attorney for Plaintiff.

STATE OF NEBRASKA,
Garfield County:

32 Wilber I. Cram, the plaintiff in the above entitled case, being first duly sworn deposes and says that the facts set forth in the foregoing petition are true as he verily believes.

WILBER I. CRAM.

Subscribed in my presence and sworn to before me, by Wilber I. Cram, this 3rd day of February 1906.

[SEAL.]

T. G. HEMMETT,
Clerk of District Court.

The foregoing was filed for record February 3rd, 1906.

T. G. HEMMETT,
Clerk of District Court.

In the District Court of Garfield County, Nebraska.

WILBER I. CRAM, Plaintiff,

vs.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, a Corporation,
Defendant.

Precipe.

To the Clerk of the District Court:

You are hereby instructed to issue summons for the defendant in the above entitled action returnable according to law and deliver the same to the sheriff of Garfield County for service. You will endorse on the back of said summons that if the defendant fails to

appear the plaintiff will take judgment for the sum of \$1770 and costs of suit.

E. J. CLEMENTS,
Attorney for Plaintiff.

The foregoing was filed for record February 3rd, 1906.

T. G. HEMMETT,
Clerk of District Court.

33 In the District Court of Garfield County, Nebraska.

WILBUR I. CRAM, Plaintiff,

vs.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, Defendant.

Demurrer.

Now comes the defendant and demur- to the petition filed by the plaintiff for the following reasons:

1st.

The petition does not state facts sufficient to constitute a cause of action in favor of the plaintiff and against the defendant.

2nd.

The statute law under which the plaintiff seeks to recover is null and void by reason of being unconstitutional, and a violation of the 14th article of the amendments to the Constitution of the United States, providing that,

"No state shall deprive any person of property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

3rd.

The plaintiff seeks to recover property or money from the defendant without its consent and for the private use of the plaintiff, without compensation, and which recovery, if had, would amount to confiscation of the property of the defendant in violation of the provisions of articles 14 of the amendments to the Constitution of the United States.

34

4th.

The recovery sought by the plaintiff, if permitted, would be the recovery of a penalty under an act of the legislature which is penal in its character, and it is not such a right as the plaintiff can have or enforce, in violation of Sec. 5 Art. 8 of the Constitution of the United States.

E. M. WHITE,
J. W. DEWEESE &
F. E. BISHOP,
Att'ys for Def't.

The foregoing was filed for record February 17th, 1906.

T. G. HEMMETT,
Clerk of District Court.

The foregoing was overruled May 9", 1906 and defendant excepted. Defendant given 40 days to answer.

In the District Court, Garfield County, Nebraska.

WILBER I. CRAM, Plaintiff,

vs.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Defendant.

Answer.

Now comes the defendant and for answer to the petition filed by the plaintiff says that it is a corporation duly organized under the laws of the State of Iowa, and that as such it had the possession, management, operation and controle of said line of railroad under and by virtue of a lease held by it for a long term of years, at the times stated in said petition.

That the shipments made by the plaintiff over the defendant's line of railroad referred to in said petition, consisted of live stock, and that said shipments were duly and properly made by the defendant company without any unnecessary delay, and the consign-
35 ments so carried were each and all duly delivered to the consignee in accordance with the contracts made for the shipment of said stock, and without any fault or negligence on the part of defendant company.

That a written contract for each of said shipments was duly made and entered into by plaintiff and defendant, by which it was contracted and agreed that the shipment would not be carried within any specified time, nor to arrive at destination for any particular market.

The defendant further says that the damages sought to be recovered by the plaintiff are in reality a penalty and forfeiture, and if recovery is had by the plaintiff it would be in violation of the provisions of the 14th article of the amendments to the constitution of the United States, and the depriving of the defendant of its property without due process of law, and the denial to the defendant of the equal protection of the laws, and such recovery would be an appropriation of the recovery of the defendant, arbitrarily, for the private use of the plaintiff in violation of the provisions of said amendment to the constitution of the United States.

The defendant further says that the plaintiff's cause of action is for recovery of a penalty sought to be imposed upon the defendant contrary to the provisions of Article 8. Section 5 of the Constitution of the State of Nebraska, and plaintiff has no right or authority under the law to prosecute said action or to recover therein.

Further answering the defendant denies each and every allegation contained in said petition except as herein stated.

36 Wherefore, defendant prays judgment against the plaintiff
for costs of suit.

E. M. WHITE,
J. W. DEWEESE, AND
FRANK E. BISHOP,
Att'ys for Def't.

STATE OF NEBRASKA,
Lancaster County, ss:

J. W. Deweese, being first duly sworn deposes and says that he is one of the attorneys for the defendant named in the above entitled action, that said defendant is a corporation; that he had read the foregoing answer and the facts, therein stated are true as he verily believes.

J. W. DEWEESE.

Subscribed and sworn to before me this 8th day of June, 1906.

[SEAL.]

S. K. KIER,
Notary Public.

Filed June 9th, 1906.

In the District Court of Garfield County, Nebraska.

WILBER I. CRAM, Plaintiff,

vs.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, Defendant.

Motion to Make Answer More Definite and Certain.

37 The plaintiff moves the court to require the defendant to make its answer more specific, definite and certain by separately stating and numbering its grounds of defense.

E. J. CLEMENTS,
Attorney for Plaintiff.

Filed July 16th, 1906.

In the District Court of Garfield County, Nebraska.

WILBER I. CRAM, Plaintiff,

vs.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Defendant.

The plaintiff moves the court to require the defendant to make its answer more specific, definite and certain in each of the following respects, to-wit:

1. By separately stating and numbering its grounds of defense.
2. By setting out or attaching to said answer copies of the written contract which it is alleged was made between the plaintiff and de-

defendant at the time of shipping said stock and under which it is alleged the same was shipped.

E. J. CLEMENTS,
Attorney for Plaintiff.

The foregoing was filed July 18th, 1906.

In District Court of Garfield County, Nebraska.

WILBER I. CRAM, Plaintiff,

vs.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Defendant.

38

Notice of Motion.

The above named defendant will take notice that on Friday the 20th day of July, at ten o'clock A. M., or as soon thereafter as I can be heard, I shall present to the District Court of said county, at chambers at the office of Hon. J. R. Hanna, Judge of said court, in Greeley Center, Nebraska, a motion, heretofore filed in this case, to require the said defendant to make its answer more specific, definite and certain by stating and numbering its grounds of defense, and to attach thereto a copy of the written contract on which it is claimed shipment was made, and shall, at said time and place, ask for a hearing on said motion and a ruling and order sustaining the same.
—A—

WILBER I. CRAM,
By E. J. CLEMENTS,
Attorney for the Plaintiff.

Received a copy of the foregoing notice this 16th day of July 1906.

E. M. WHITE,
J. W. DEWEESE, AND
FRANK E. BISHOP,
Att'ys for Def't.

The foregoing was filed July 18th, 1906.

In the District Court of Garfield County, Nebraska.

WILBER I. CRAM, Plaintiff,

vs.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Defendant.

39 This cause came on to be heard, on this 11th day of August, A. D. 1906 the same having been heretofore submitted to the Court, at Chambers in Greeley, Greeley County, Nebraska, upon the motion of the plaintiff to require the defendant to make its answer more specific, definite and certain, in this, first, by separately stating and numbering its grounds of defense, second, by

setting out or attaching to said answer copies of the written contract it is alleged was made between the plaintiff and the defendant at the time of shipping said stock and under which it is alleged the same were shipped, on consideration whereof the court doth sustain said motion, and leave is hereby given to the defendant to amend its answer to comply with this finding and order, within thirty days from this date.

Defendant duly excepts.

JAMES R. HANNA,
Judge of the District Court.

The foregoing was filed August 11th, 1906.

Copy.

In the District Court of Garfield County, Nebraska.

WILBUR I. CRAM, Plaintiff,

vs.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, a Corporation,
Defendant.

Stipulation.

It is hereby stipulated and agreed by and between the parties hereto that the plaintiff shall amend his petition by interlineation by adding to each of the causes of action therein after the amount of damage claimed the following words "as provided for by said statutes"; that said petition shall be considered the same as if said words had been inserted therein at the time the same was filed; that said words shall be interlined in said petition at any time before the trial of this case and that the time of filing answer reply and the time of trial of said case shall not be in any manner affected by the filing of this stipulation or the making said amendment by interlineation.

E. J. CLEMENTS,
Attorney for Plaintiff.
J. W. DEWEESE &
F. E. BISHOP,
Attorneys for Defendant.

September 20th, 1906.

The foregoing was filed September 24th, 1906.

In the District Court, Garfield County, Nebraska.

WILBER I. CRAM, Plaintiff,

vs.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Defendant.

Amended Answer.

1. Now comes the defendant and for amended answer to the petition filed by the plaintiff says that it is a corporation duly organized under the laws of the state of Iowa, and that as such it manages, operates and controls the lines of railroad referred to in plaintiff's petition, and did so manage, operate and control the same at the times stated in said petition.

41 2. That the shipments made by the plaintiff over the defendant's line of railroad as alleged in said petition consisted of live stock, and the shipments were made under and by virtue of written and printed contracts between the plaintiff and the defendant as a common carrier, and the defendant accepted said stock and made the shipments thereof in accordance with the terms and conditions of the contracts made, and without any fault or negligence on the part of the defendant company.

3. That the defendant railway company as common carrier accepted the said stock offered for shipment and carried and delivered the same at destination under and in accordance with the laws, rules and usages that regulate and govern common carriers, and in accordance with the schedules for the movement of trains as established and in force at the times said shipments were made.

4. That the defendant's line of railroad over which the plaintiff's shipments were made from the station of Burwell to the station of South Omaha is made up of parts of various lines of railroad operated by the defendant with branch connections at Greeley Center, Palmer, Aurora, York, Seward, Lincoln and Ashland.

The said line of railroad over which shipments were made includes a portion of the main line of defendant's railway between Chicago in the State of Illinois and the city of Kearney in the state of Nebraska; and is a part of the main line extending from St. Louis in the state of Missouri to Billings in the state of Montana, each of said main lines having numerous branch lines from various parts of Nebraska

42 and the different states through which they run, thus forming an intricate system of railways over which freight and passenger trains are constantly running in both directions.

That the trains carrying the plaintiff's shipment referred to were required to pick up other cars of stock at the various stations between Burwell and South Omaha, and at the connecting points of branch lines, and at the division points as stated above, all of which work occupied considerable time in the picking up of other stock shipments besides the plaintiff's while in transit. The defendant says that in the practical operation of trains for the carrying of the plaintiff's stock and the time required in picking up other stock shipments

on the line and the necessary interference of the passage of the numerous trains, both freight and passenger, over portions of the said line of railroad, made it impossible for any one train to move exactly on any specified schedule of time. And the defendant alleges that the law under which the plaintiff seeks to recover the penalties sued for, being chapter 107 of the Laws of 1905, is arbitrary, unreasonable, and the requirements thereof impossible to conform to within the transportation of live stock, and is therefore null and void.

5. The defendant further says that the distance from station of Burwell to the station of Aurora is 104 miles, and the distance from the station of Aurora to the station of South Omaha is 125 miles; and that the stations of Aurora and Lincoln are division stations on said line of railroad.

6. That the first shipment of stock as made by the plaintiff and as alleged in his petition, was on Saturday July 1st 1905, and the defendant's train started with said shipment from the station of Burwell at 9.15 A. M. on said day, arriving at Aurora at 6 P. M. of said day, the cars of stock were there turned over to the train on the main line, and other cars picked up at the station of Aurora, and transported to the station of Lincoln arriving there at 10.30 P. M. of said day, where the stock was unloaded and fed, it being unnecessary as well as unlawful for the carriage and delivery of said stock at South Omaha on Sunday. That said stock was reloaded at Lincoln and then carried and delivered at South Omaha on Monday, July 3rd, at 12.40 A. M.

The second shipment made by the plaintiff was on Thursday July 6th 1905, the train leaving the station of Burwell at 12.45 P. M. the cars delivered over to the connecting trains at Aurora and Lincoln, arriving finally at South Omaha on Friday July 7th at 6.25 A. M.

The third shipment made by the plaintiff was on Thursday July 13, 1905, the train leaving the station of Burwell at 12.45 P. M. the cars delivered to the connecting trains at Aurora and Lincoln, and arriving finally at South Omaha on Friday July 14th at 6 A. M.

The fourth shipment made by the plaintiff was on Friday July 14, 1905, the train leaving the station of Burwell at 9 A. M. the cars delivered to the connecting trains at Aurora and Lincoln arriving finally at South Omaha on Saturday July 15th at 6.15 A. M.

The fifth shipment made by the plaintiff was on Monday July 17, 1905, the train leaving the station of Burwell at 12.45 P. M., the cars delivered to the connecting trains at Aurora and Lincoln, the stock arriving in South Omaha on Tuesday July 18, at 6.30 A. M.

44 The 6th shipment made by the plaintiff was on Thursday July 20, 1905, the train leaving the station of Burwell at 12.45 P. M. and the cars delivered to the connecting trains at Aurora and Lincoln, arriving finally in South Omaha Friday July 21 at 6.38 A. M.

The 7th shipment made by the plaintiff was on Friday July 21st, 1905, the train leaving the station of Burwell at 9 A. M. the cars delivered to the connecting trains at Aurora and Lincoln arriving finally in South Omaha on Saturday July 22, at 6.55 A. M.

The 8th shipment made by the plaintiff was on Monday July 24, 1905, the train leaving the station of Burwell at 12.45 P. M. the cars turned over to the connecting trains at Aurora and Lincoln, finally arriving at South Omaha on Tuesday, July 25, at 7.32 A. M.

The 9th shipment made by the plaintiff was on Friday July 28, 1905, the train leaving the station of Burwell at 9 A. M. the cars delivered to the connecting trains at Aurora and Lincoln, arriving finally in South Omaha on Saturday July 29, at 8.40 A. M.

The 10th shipment made by the plaintiff was on Monday July 31, 1905, the train leaving the station of Burwell at 12.45 P. M. the cars turned over to the connecting trains at Aurora and Lincoln, arriving in South Omaha on Tuesday August 1, at 6.15 A. M.

The 11th shipment made by the plaintiff was on Monday August 7, 1905, the train leaving the station of Burwell at 12.45 P. M., the cars delivered to the connecting trains at Aurora and Lincoln, arriving in South Omaha on Tuesday August 8, at 5.35 A. M.

The 12th shipment made by the plaintiff was on Thursday August 10, 1905, the train leaving the station of Burwell at 12.45 P. M., the cars delivered to the connecting trains at Aurora and Lincoln, arriving in South Omaha, on Friday the 11th at 5.35 A. M.

The 13th shipment made by the plaintiff was on Thursday August 17, 1905, the train leaving Burwell at 12.45 P. M. and the cars turned over to the connecting trains at Aurora and Lincoln, arriving in South Omaha on Friday, August 18 at 11.40 A. M.

The 14th shipment made by the plaintiff was on Friday August 18, 1905, the train leaving the station of Burwell at 9 A. M., and the cars delivered to the connecting trains at Aurora and Lincoln, arriving finally in South Omaha on Saturday August 19, at 9.50 A. M.

The 15th shipment made by the plaintiff was on Monday, August 21, 1905, the train leaving the station of Burwell — 12.45 P. M. the cars delivered to the connecting trains at Aurora and Lincoln arriving at South Omaha on Tuesday August 22 at 9.55 A. M.

The 16th shipment made by the plaintiff was on Thursday August 24th, 1905, the train leaving Burwell at 12.45 P. M. the cars being turned over to, the connecting trains at Aurora and Lincoln, finally arriving at South Omaha on Friday August 25, at 8.50 A. M.

The 17th shipment made by the plaintiff was on Friday August 25, 1905, the train leaving Burwell at 9 A. M., the cars turned over to the connecting trains at Aurora and Lincoln, finally arriving at South Omaha Saturday August 26th at 7.20 A. M.

The 18th shipment made by the plaintiff was on Monday, August 28, 1905, the train leaving Burwell at 12.45 P. M. the cars delivered to the connecting trains at Aurora and Lincoln, finally arriving in South Omaha Tuesday, August 29th, at 6.15 A. M.

The 19th shipment made by the plaintiff was on Monday September 4, 1905, the train leaving Burwell at 12.45 P. M., the cars being delivered to the connecting trains at Aurora and Lincoln, finally arriving at South Omaha Tuesday, September 5th, at 1 P. M.

The 20th shipment made by the plaintiff was on Thursday, Sept. 7th, 1905, the train leaving Burwell at 12.45 P. M., the cars being

delivered to the connecting trains at Aurora and Lincoln, and finally arriving in South Omaha on Friday, September 8th at 8:20 A. M.

The 21st shipment made by the plaintiff was on Friday, September 8th, 1905, the train leaving Burwell with the stock at 9.30 A. M., the cars being delivered to the connecting trains at Aurora and Lincoln, finally arriving in South Omaha on Monday, September 11th, at 2.35 A. M.; that in said shipment a stop was made at Lincoln over Sunday, it being unnecessary as well as unlawful to carry said shipment into South Omaha on Sunday.

The 22nd shipment made by the plaintiff was on Monday, Sep. 11th, 1905, the train leaving Burwell at 12.45 P. M., the cars delivered to the connecting trains at Aurora and Lincoln, and arriving at South Omaha on Tuesday, September 12, at 10.12 A. M.

The 23rd shipment made by the plaintiff was on Thursday, September 21, 1905, the train leaving the station of Burwell at 12.45 P. M. the cars delivered to the connecting trains at Aurora and Lincoln finally arriving at South Omaha Friday, September 23, at 8.20 A. M.

The 24th shipment made by the plaintiff was on Monday, September 25, 1905, the train leaving the station of Burwell at 12.45 P. M. the cars delivered to the connecting trains at Aurora and Lincoln arriving in South Omaha on Tuesday, September 26, at 9.35 A. M.

The 25th shipment made by the plaintiff was on Monday, October 2nd, 1905, the train leaving the station of Burwell at 11 A. M. the cars delivered to the connecting trains at Aurora and Lincoln, and finally arriving in South Omaha Tuesday, October 3rd, at 8.25 A. M.

7th. The defendant alleges that in the first shipment of stock complained of by plaintiff, a written and printed contract was made, a copy of which is hereto attached and made a part of this answer marked exhibit "A," and that similar contracts were made between the plaintiff and the defendant for each of the several shipments of stock complained of, and among other terms of said contracts it was specifically provided that the defendant railway company did not undertake to carry and deliver said stock within any specified time, nor agree that the said stock should arrive at destination for any particular market.

8th. The defendant further says that the law under which the plaintiff seeks to recover damages, arbitrarily fixes the amount and character of the recovery as a penalty and forfeiture for the private use of the plaintiff, and the defendant alleges that if recovery is had by the plaintiff under such law, it would be in violation of the provisions of Section 1 of Article 14 of the amendments to the constitution of the United States, in that it deprives the defendant of its property without due process of law and denies to it the equal protection of the laws and would involve the impairment of the obligations of the contract made between the plaintiff and defendant for the shipment of said stock in violation of paragraph 1, Section 10, Article 1, of the constitution of the United States, and would be a violation also of the provisions of

Section 5 Article 8 of the constitution of the State of Nebraska, providing for the recovery and disposition of all fines, penalties and forfeitures.

9th. Further answering said petition the defendant denies each and every allegation contained therein other or different from the allegations made and set forth in this answer.

Wherefore the *plaintiff* prays judgment against the *plaintiff* for costs.

E. M. WHITE,
J. W. DEWEESE, AND
F. E. BISHOP,
Att'ys for Def't.

STATE OF NEBRASKA,
Lancaster County, ss:

J. W. Deweese being first duly sworn on oath says that he is one of the attorneys for the defendant above named which is a corporation; that he has read the foregoing answer, knows the contents thereof, and that the averments therein set forth are true as he verily believes.

J. W. DEWEESE.

49 Subscribed in my presence and sworn to before me by the said J. W. Deweese, this 20th day of September, 1906.

[SEAL.]

FRED M. DEWEESE,
Notary Public.

The foregoing was filed September 24th, 1906.

50

EX-IBIT "A."

J-5-'06. 50 M.

Form 120.

Duplicate.

This Duplicate must be sent to office of Auditor of Freight Accounts with Forwarded Abstract on date billing for the car is reported.

Burlington Route.

Chicago, Burlington & Quincy Railway Company.

Live Stock Contract.

Agents of this Company are not authorized to agree to forward Live Stock to be delivered at any specified time or for any particular market. Agents will permit only the names of the owners or bona fide employes, who accompany the stock, to be entered on the back of the Contract without regard to the number of attendants permitted by the rules of the Railroad for the number of cars shipped.

The Contract when endorsed by the person or persons in charge, and signed in ink by Agent, will entitle such person or persons to ride on same train with stock to care for same, but will not entitle holder of Contract to ride on any other train, nor will Contract be accepted for passage on any passenger train. Conductor of freight train must punch Contract, or in absence of punch will endorse his name on back of Contract when presented for passage. Live Stock Contracts are not good for return passage. Parties entitled to return passage will be provided with return tickets on application to proper office. Conductors will be held strictly responsible for permitting persons to ride on Stock Contracts, except when in charge of Live Stock.

51

No. of waybill.	No. and initial of car.	No. of animals in each car.	No. of waybill.	No. and initial of car.	No. of animals in each car.
159	16459 Q.	68 Hogs			
		WXL S.L.&C.			

Read the Contract.

(21)

Burwell, Nebr., Station.

This contract, made and entered into this 2nd day of September, 1905, by and between W. I. Cram, of Burwell, of the first part, and the Chicago, Burlington & Quincy Railway Company of the second part.

(Shipper's Residence.)

Witnesseth, That for and in consideration of 23½ per Cwt., subject to minimum weights as shown in published tariffs, the said Rail-

(Here insert rates.)

way Company agrees to transport one cars loaded with Hogs (number of cars, number of waybills, and number of animals as noted above), from Burwell to So. Omaha consigned to G. W. Adams & F. Co., and the said first party, in consideration thereof, agrees to deliver the said animals, to the said Railway Company, for transportation between the points aforesaid upon the following terms, viz:

That, Whereas, the said first party, before delivering the said

animals to said Railway Company, demanded to be advised of the rate to be charged for the carriage of said animals, as aforesaid, and thereupon was offered by the said Railway Company alternative rates proportioned to the value of the said animals, such value to be fixed and declared by the first party or his agent, and

52 Whereas, Such alternative rates are made in pursuance of the provisions relating thereto of the classification of freights adopted as regulations by the said Railway Company, and fully set forth as follows, to-wit:

"Live Stock.—Ratings given above are based upon declared valuations by shippers, not exceeding the following:

Each Horse or Pony (Gelding, Mare or Stallion), Mule or Jack	\$100.00
Each Ox, Bull or Steer.....	50.00
Each Cow.....	30.00
Each Calf.....	10.00
Each Hog.....	10.00
Each Sheep or Goat.....	3.00

"When the declared value exceeds the above, an addition of 25% will be made to the rate for each 100 per cent. or fraction thereof, of additional 'declared valuation per head'; which said alternative rates are fully shown in and upon the regular tariffs and classifications printed, published and posted by the said Company as required by Law, and

53 Whereas, the first party, in order to avail himself of said alternative rates, and to secure the benefits thereof, has declared and does hereby declare said animals to be of the value as follows, to-wit:

Each Hog, Value \$10.00. Each —, Value \$—.

To which value the rate aforesaid is proportioned by the classification and tariffs aforesaid:

Now, in consideration of the premises and of the foregoing, it is expressly agreed that for all purposes connected with, resulting from or in any manner growing out of this contract, and the transportation of the said animals pursuant thereto, the value of the said animals and of each thereof, shall in no case exceed the said valuation.

It is further agreed in consideration of the alternative rate so made by the said Railway Company and accepted by the first party, that in case of loss of or damage to said animals, whether resulting from accident or negligence of said Railway Company, or its servants, the said Railway Company shall not be liable in excess of the actual loss or damage; and in no case shall the said Railway Company be liable in any manner in excess of the agreed valuation upon each animal lost or damaged. Nor shall said Railway Company be liable for loss or damage after delivery to any connecting line, nor for any loss or damage not incurred upon its own line; but nevertheless in the event that the said animals are to be transported beyond the line of the railway of the second party upon and by any connect-

ing line forming a part of the system known as the "Burlington System" then it is expressly understood and agreed that this contract shall be for and shall inure to the benefit of, the corporation operating such connecting line, and such connecting line shall be liable to perform all the obligations of this contract.

54 It is further agreed that the said Railway Company shall in no case be liable for any loss or damage to said animals, unless a claim shall be made in writing by the owner or owners thereof, or his or their agents, and delivered to a General Freight Agent of the said Railway Company, or to the agent of said Railway Company at the station from which the animals are shipped, or to the agent at the point of destination, within ten (10) days from the time the said animals are removed from the cars. And in case of loss or damage upon any connecting line, such connecting line shall not be in any manner liable unless claim shall be made in like manner in writing to such general officer or agent of such connecting line.

And in consideration of free transportation for — persons designated by the first party, who have endorsed their names hereon in the presence of the agent, hereby given by said Railway Company such persons to accompany the stock, it is agreed that the said cars and the said animals contained therein, are and shall be in the sole charge of such persons, for the purpose of attention to and care of the said animals, and that the said Railway Company shall not be responsible for such attention and care; and further, that the second party shall not be liable to the first party or any of his servants, agents, or co-partners, or other person, carried pursuant to this contract, for any injury or damage, from whatever cause, suffered or incurred while being so carried. And the first party agrees that, before setting out upon the journey, he will fully inform each of the persons to be carried pursuant hereto of the provisions of this contract in this regard.

55 It is agreed that the said animals are to be loaded, unloaded, watered and fed by the owner or his agents in charge; that the second party shall not be liable for loss from theft, heat or cold, jumping from car, or other escape, injury in loading or unloading, injury which animals may cause to themselves or to each other, or which results from the nature or propensities of such animals, and that the Railway Company does not agree to deliver the stock at destination at any specified time, nor for any particular market.

Witness the name of the Railway Company by its Agent, and the hand of the first party, the day and year first above written.

CHICAGO, BURLINGTON & QUINCY
RAILWAY COMPANY,

By W. S. GREEN, *Agent*.

W. I. CRAM, *Shipper*.

This Duplicate must be signed by Shipper and Agent.

56 Endorsed: Chicago, Burlington & Quincy Railway Company. Live Stock Contract. Nos. of Cars Q. 16459. Parties

actually in charge of and accompany within names Stock must write their own names in ink here * * * (Parties in charge have written their own names above.) W. S. Green, Agent; Burwell Station.

NOTE.—Agent must know correct names of parties entitled to pass are written above, and run a pen through remaining lines.

Return transportation will be issued to attendants entitled to same, in accordance with rules of the Company, at following named offices:

Atchison, Kans.	General Agent's Office.
Beardstown, Ills.	Local Freight Agent's Office.
Burlington, Iowa	Division Freight Agent's Office.
Chicago, Ills.	{ General Freight Office.
	{ Union Stock Yards.
Council Bluffs, Ia.	Ass't Division Freight Agent's Office.
Denver Colo.	General Agent's Office.
E. St. Louis, Ill.	{ Local Freight Agent's Office.
	{ National Stock Yards.
Galesburg, Ills.	Division Freight Agent's Office.
Hannibal, Mo.	General Agent's Office.
	{ General Agent's Office.
Kansas City, Mo.	{ Kansas City Stock Yards.
	{ General Freight Office.
Keokuk, Iowa	General Agent's Office.
Leavenworth, Kans.	General Agent's Office.
Lincoln, Neb.	Local Freight Agent's Office.
Nebraska City, Neb.	Local Freight Agent's Office.
Omaha, Neb.	General Freight Office.
Ottumwa, Iowa	Local Freight Agent's Office.
Peoria, Ills.	General Agent's Office.
Quincy, Ills.	General Agent's Office.
Rock Island, Ills.	Division Freight Agent's Office.
South Omaha, Neb.	Union Stock Yards.
	{ Division Freight Agent's Office.
St. Joseph, Mo.	{ St. Joseph Stock Yards.
	{ General Freight Office.
St. Louis, Mo.	General Agent's Office.
Streator, Ills.	Local Freight Agent's Office.

57 In District Court of Garfield County, Nebraska.

W. I. CRAM, Plaintiff,

vs.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Defendant.

Reply.

The plaintiff for reply to the answer of defendant herein filed denies each and every allegation therein contained save and except such as admit the allegations of plaintiff's petition.

E. J. CLEMENTS,
Attorney for Plaintiff.

STATE OF NEBRASKA,
Garfield County:

W. I. Cram, the plaintiff in the above entitled action, being first duly sworn deposes and says that the facts set forth in the foregoing reply are true as he verily believes.

W. I. CRAM.

Subscribed in my presence and sworn to before me this — day of October, 1906.

[SEAL.]

T. G. HEMMETT,
Clerk of District Court.

The foregoing was filed October 9th, 1906.

In the District Court of Garfield County, Nebraska.

WILBUR I. CRAM, Plaintiff,
vs.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY, Defendant.

58 This cause came on for hearing this 9th day of October, 1906, on the pleadings and the evidence and was submitted to the court a jury having been duly waived in open court by the parties hereto.

The foregoing was filed October 12th, 1906.

In the District Court, Garfield County, Nebraska.

WILBUR I. CRAM, Plaintiff,
vs.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Defendant.

Motion for New Trial.

The defendant now moves the court to set aside its findings and judgment against the defendant and to order a new trial in this case for the reasons:

1. The finding and judgment are contrary to law.
2. The finding and judgment are not supported by sufficient evidence to sustain them.
3. The undisputed evidence shows that each of the shipments in question were transported by the defendant in reasonable time and without unnecessary delay, and the defendant company should not be held liable for any damage or penalty on account of any of said shipments, all of which were made on contracts fairly entered into between the plaintiff and defendant upon the agreement of the parties that the company did not undertake to carry said shipments within any specified time nor for any particular market.

59 4. The findings and judgment are erroneous because there was no fault nor violation of duty on the part of the defendant company in carrying any of said shipments according to the rules laws and usages governing common carriers of live stock which was all the duty imposed upon the defendant by the laws and constitution of the state of Nebraska.

5. The amount of the recovery in each shipment in this case is a penalty imposed on the defendant regardless of any loss or damage to the plaintiff, and such damage as a penalty cannot be sued for nor recovered by the plaintiff individually but if it could be enforced at all, it must be recovered as a fine or penalty and be appropriated to the school fund as is provided by the constitution of the state, Article 8 Section 5.

6. The court erred in its findings and judgment in giving force and effect to the statute of the state assessing the penalty or liquidated damages in each one of the shipments complained of, because the penalty fixed is arbitrary and unreasonable, and is recoverable regardless of any failure of duty or neglect on the part of the defendant, and regardless of any loss or damage to the plaintiff, and is an appropriation of the property of the defendant and confiscation of the same to the private use of the plaintiff without due process of law, and is a deprivation to the defendant of its property without due process of law and a denial to it of the equal protection of the law in violation of the provisions of the 14th Article of the amendments of the Constitution of the United States, and also in violation of the bill of rights and constitution of this state.

60 7. The findings and judgment of the court are an impairment of the obligation of the contracts of shipment entered into between the plaintiff and defendant, and a refusal to give effect to such contracts in violation of the provisions of the constitution of the United States, Section 10, Article 1.

8. The findings and judgment of the court are a violation of the provisions of Section 1 of Article 14, of the amendments of the constitution of the United States in that they deprive the defendant of its property without due process of law, and deny to it the equal protection of the laws, and are an appropriation of defendant's property to the plaintiff's private use, arbitrarily and in violation of said provisions of the constitution of the United States.

E. M. WHITE,
J. W. DEWEESE AND
F. E. BISHOP,

Att'ys for Def't.

The foregoing was filed October 13th, 1906, 7.30 P. M.

In the District Court of Garfield County, Nebraska.

WILBUR I. CRAM, Plaintiff,

vs.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Defendant.

Journal Entry.

Now on this 6th day of December, 1906, this cause came on for hearing on the motion of the defendant for a new trial and the court being advised in the premises, overrules said motion, to which ruling the defendants excepts, and is given 40 days from the rising of the court to prepare and serve bill of exceptions.

61 In the District Court, Garfield County, Nebraska.

WILBUR I. CRAM, Plaintiff,

vs.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Defendant.

Notice.

To E. J. Clements, attorney for the plaintiff:

You are hereby notified that the bill of exceptions in the above entitled case which was tried on or about the 9th day of October, 1906, will be presented to the Honorable J. N. Paul, for allowance and settlement, and the consideration and disposal of the objections which you have filed to said bill of exceptions at the court house in Burwell, Garfield County, Nebraska, on January 15th, 1907.

E. M. WHITE,
J. W. DEWEESE &
F. E. BISHOP,

Attorneys for Defendant.

Received copy of the above notice this 12th day of January, 1907,
at 12 o'clock M.

E. J. CLEMENTS,
Attorney for Plaintiff.

The foregoing was filed January 15th, 1907.

In the District Court of Garfield County, Nebraska.

WILBUR I. CRAM, Plaintiff,

vs.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, a Corporation, Defendant.

Motion.

62 Comes now the defendant and asks leave of court for the introduction of additional evidence for the purpose of hav-

ing the contracts of shipment entered into between the parties hereto identified and *made* a part of the bill of exceptions now before the court for allowance and settlement, in accordance with the following stipulation and offer made in open court upon the trial of said case, as shown upon the reporter's record: and proposed bill of exceptions on page 37 as follows: "The defendant offers in evidence the original contracts made by and between plaintiff Cram and defendant Railway Company in each and all of the twenty-five different shipments, but those original contracts not being present in court today defendant asks leave to submit same to plaintiff and counsel so that they can see them and then to have them made a part of the record to which plaintiff objected as incompetent, irrelevant and immaterial.

By the COURT: "They may be received."

Now therefore it appearing from objections to the proposed bill of exceptions filed by plaintiff that said stipulation and offer has been challenged, the defendant asks leave of the court to introduce evidence to identify said original contracts of shipment and that they may be attached to and made a part of the proposed bill of exceptions now presented for settlement.

E. M. WHITE,
J. W. DEWEESE AND
F. E. BISHOP,

Attorneys for Def't.

The foregoing was filed January 15th, 1907.
Jan. 15, 1907.

Application to open case for further evidence in absence of plaintiff overruled. Defendant excepts.

63 In District Court of Garfield County, Nebraska.

WILBER I. CRAM, Plaintiff,
vs.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY, Defendant.

This cause came on for hearing on this 12th day of October, 1906, the same having heretofore been tried upon the pleadings and the evidence, and submitted to the court, and the court being fully advised in the matter finds for the plaintiff on the issues joined herein and that there is due from the defendant to the plaintiff on the several causes of action set out in his petition the sum of \$1640.00.

It is therefore considered and adjudged by the court that the plaintiff have and recover of the defendant the sum of \$1640.00 and his costs herein expended taxed at \$49.70.

The defendant excepts to said finding and judgment and is given forty days in which to settle its bill of exceptions.

The foregoing was filed October 12, 1906.

In District Court in and for Garfield County, Nebraska.

WILBER I. CRAM, Plaintiff,

vs.

THE CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY, a
Corporation, Defendant.

64 STATE OF NEBRASKA,
Garfield County, ss:

I, T. G. Hemmett, clerk of the District Court in and for Garfield County, Nebraska, do hereby certify that the foregoing is a full true and correct transcript of all the pleadings and files now on file in this court in the above entitled case, except the summons.

Dated at Burwell, Nebraska, this 28th day of January, 1907.

[SEAL.]

T. G. HEMMETT,
Clerk of the District Court.

See further certificate at end of Bill of Exceptions.

In the District Court, Garfield County, Nebraska.

WILBER I. CRAM, Plaintiff,

vs.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, a Corpora-
tion, Defendant.

STATE OF NEBRASKA,
Garfield County:

I, T. G. Hemmett, clerk of the district court of Garfield County, Nebraska, do hereby certify that the foregoing is the original bill of exceptions in said cause, and also a true and perfect transcript of the petition, Answer, amended answer, demurrer, reply, motion for new trial, together with the court's rulings, journal entries and judgment, as the same are on file and of record in my office.

Dated this 28th day of January, 1907.

[SEAL.]

T. G. HEMMETT,
Clerk Dist. Court.

Fee for transcript paid to Clerk Dist. Ct. Jan. 31, '07—\$16—by
Defendant.

65 Endorsed: 15148—Cram v. C. B. & Q. Ry. Co.—Trans-
script.—Supreme Court of Nebraska—Filed Apr. 12, 1907—
H. C. Lindsay, Clerk.

And on the same day there was filed in the office of the Clerk of said Supreme Court a certain Bill of Exceptions, in the words and figures following, to-wit:

Filed Jan. 15", 1907—T. G. Hemmett—Clerk Dist. Court—Bill
of Exceptions & Transcript.

In District Court of Garfield County, Nebraska.

WILBER I. CRAM, Plaintiff,

vs.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, a Corporation,
Defendant.

Proposed Amendments to Bill.

I hereby return the draft of the bill of exceptions in the above entitled case submitted to me on the 5th day of December 1906, and propose and ask that the same be amended in each of the following respects, to-wit:

1. By striking therefrom and disallowing as a part thereof each and all of the partly written and partly printed instruments purporting to be Duplicate Live Stock Contracts found on pages 66 38 to 55, both inclusive, of said proposed bill of exceptions for the following reasons:

(a) Because none of said instruments is in any manner identified as, or shown to be, a part of the evidence or proof introduced or offered in evidence in said case.

(b) Because none of said instruments was produced in court or introduced or offered in evidence at the trial of said case.

(c) Because none of said instruments was produced in court at the trial of said case or before the entry of the judgment therein.

(d) Because none of said instruments was ever presented to or seen by the trial court before the judgment was rendered in said case.

(e) Because none of said instruments was presented to or seen by the judge who tried said case without the intervention of a jury, the official reporter who took the evidence or the attorney for the plaintiff therein at the time of the trial nor until a long time after the judgment was rendered and entered therein.

WILBER I. CRAM,
By E. J. CLEMENTS,
His Attorney.

Dated December 15th, 1906.

In the District Court of Garfield County, Nebraska.

WILBUR I. CRAM, Plaintiff,

vs.

THE CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, a
Corporation, Defendant.

67

Bill of Exceptions.

Appearances:

E. J. Clements, Counsel for Plaintiff.

E. M. White, J. W. Deweese, Counsel for Defendant.

H. J. Paul, Official Reporter, St. Paul, Nebr.

Be it remembered that at the October term of the District Court of the eleventh judicial District of Nebraska, within and for the County of Garfield, to-wit: on the 9th day of October, 1906, being of the regular days of said term, the above entitled cause was tried before the Court, the Honorable James N. Paul, one of the judges of said district, presiding.

That on the trial of said cause on said named day the said Plaintiff and Defendant, to maintain the issues joined, on their respective parts introduced and offered the following testimony, both oral and documentary, and interposed the objections, with the grounds therefor, and took the exceptions to the rulings thereon which are herein noted.

68

Stipulation.

It is admitted that July 1st, 1905, was Saturday, the other days of the week in which the several different shipments were made are correct as made in Defendant's answer.

F. R. MULLEN, called and sworn as a witness for the Defendant, testified as follows.

Examined by Mr. DEWEESE:

1 Q. What is your occupation?

A. Chief train dispatcher for the Lincoln division.

2 Q. Does your jurisdiction extend over the Burlington line between Burwell and South Omaha?

A. It does.

3 Q. You may state what different branch lines come into the line from Burwell to Aurora?

A. At Greeley Centre from Ericson and at Palmer the line of Sargent to Palmer.

4 Q. And the next?

A. That is the only two between Burwell and Aurora.

5 Q. Then at Aurora what lines join?

A. The subdivision of Lincoln to Ravenna, the Lincoln and Billings line and the line from Hastings to Aurora.

6 Q. Toward Lincoln?

A. Yes, sir.

7 Q. Passed by what other line?

A. At York it is crossed by a line from Stromsburg to Alma.

8 Q. Is that a Burlington line?

A. Yes, sir.

69 9 Q. At Seward the Lincoln to Columbus branch and at Lincoln by how many different lines?

A. By the line from Pacific Junction to Kearney, Lincoln to Table Rock, Lincoln to Nebraska City, Lincoln to Columbus.

10 Q. And Hastings and Denver?

A. I stated that. There is another one, the line from Wymore to Crete.

11 Q. Then from Lincoln to Omaha how many different Burlington lines join the main line? I mean South Omaha.

A. Between Lincoln and South Omaha we have one line to Ashland and from Ashland, via Gretna, one line from *and* Ashland to South Omaha via Louisville and at Fort Crook, or at Pappio this latter line forms a junction of one line to South Omaha over the Union Pacific track from Gilmore Junction and our track via Omaha, and at Ashland we have connection with the line from Ashland to Schuyler.

12 Q. And at Plattsmouth?

A. I specified that.

13 Q. At Lincoln—did you mention the line from St. Louis to Billings, this is the Wymore division?

A. Yes, sir.

14 Q. Does the Table Rock line carry passenger trains to Billings, back and forth? And the Kearney, Hastings and Denver—state whether or not this is a through line to Chicago?

A. It is.

15 Q. Carrying freight and passenger trains?

A. Yes, sir.

70 16 Q. Now in shipping stock in these instances, state how that stock would go to South Omaha from Lincoln?

Objected to as incompetent.

No ruling.

17 Q. How would it go. How would these shipments involved in this case reach South Omaha?

A. A number went by way of Gretna and some few via Louisville and Fort Crook.

18 Q. What is the distance from Lincoln to South Omaha by Gretna?

A. 51 $\frac{2}{10}$ miles.

19 Q. What is the distance from Lincoln to South Omaha by way of Louisville and Fort Crook?

A. 65 miles.

20 Q. What is the distance from Burwell to Aurora, on the Burlington line?

A. 104 miles.

21 Q. What is the distance from Aurora to Lincoln, on the Burlington line?

A. 73 9/10 miles.

22 Q. What was the reason, if there was any reason, why the stock shipments, mentioned in this case, or some of them, went from Lincoln to South Omaha on one line and some on another line?

A. The movement from Lincoln to South Omaha is governed entirely by the traffic. There are times when the traffic is congested between Lincoln and Gretna and we have to move the other way.

23 Q. What do you mean by the track being congested?

A. Being occupied by the other trains.

24 Q. The trains are so thick that another train could not get through?

71 Objected to as leading and suggestive.
Objection sustained and exception taken.

25 Q. When that is the case what do you do in getting from Ashland to South Omaha in the quickest way possible?

A. Move the train in the quickest way possible to make the best time.

26 Q. Was it true that on account of numerous trains occupying the line that quicker time could be made and was made by taking the train between Ashland and South Omaha by the longer route?

Objected to as leading and suggestive
Objection overruled and exception taken.

A. I don't know in regard to these cases but, never-the-less, it follows that that is a fact; that it is quicker to move trains by the low grade line in most cases.

27 Q. What do you mean by low grade?

A. The one that is level.

28 Q. Where is that?

A. Via Louisville and Fort Crook.

29 Q. Which road is it from Ashland to South Omaha that has the heaviest grade and which has the easiest grade?

A. The line by Gretna has the heaviest grade and the line by Louisville has the light grade.

30 Q. If one of these lines has a lighter grade than the other state how that affects the speed of the trains and how they can be operated?

Objected to as calling for a conclusion of witness.

Objection overruled and exception taken.

72 A. In using the low grade line a train can acquire a certain speed and maintain that speed, while in using the hilly line the movement of the train is necessarily very slow on steep grades.

31 Q. In the 25 different shipments that were made by Defendant Cram, as set forth in the 25 different shipments, can you tell us

whether a record was kept of the movements of the different trains of these shipments from Burwell to South Omaha?

A. There was.

32 Q. What do you call the paper upon which the movement of the trains are kept?

A. Train sheet.

33 Q. Is that made up under your control?

A. Yes, sir.

34 Q. Have you the train sheets from the movements of train in shipments of stock on July 1st., 1905, from Burwell to South Omaha by Cram?

A. I have.

35 Q. Please state what time that train left Burwell?

Objected to as immaterial and not the best evidence.

Objection overruled and exception taken.

A. At 9.15 A. M.

36 Q. What time did it reach Aurora?

Objected to as incompetent, irrelevant, immaterial, not the best evidence and no foundation.

Objection overruled and exception taken.

37 Q. In answering that question you may look at your record, if you have any, so as to give you data etc.

Objected to as incompetent, irrelevant, immaterial, not the best evidence and no foundation.

73

Objection sustained.

38 Q. I will ask you who made that record?

A. It is dispatcher C. E. Keefer's.

Plaintiff moves to strike out the answer as there is nothing in this record showing he has any record.

Motion sustained.

39 Q. You may refer to the train sheet you say was made to show the movements of trains and the train leaving Burwell July 1st., 1905, and tell us who made that record.

Objected to as incompetent, immaterial, irrelevant and no foundation.

Objection overruled and exception taken.

A. It was made by four different dispatchers. F. H. Vanwie starting the train from Burwell and handling it as far as far as Palmer—

Plaintiff moves to strike the answer in regard to Palmer as not responsive.

Objection sustained.

40 Q. You may refer to the train sheet you say was made to show the movements of the trains and the train leaving Burwell July 1st. 1905, and tell us who made it.

A. F. H. Vanwie, C. E. Keefer, W. E. Martin and H. B. Ware.

41 Q. Under whose supervision and at whose instance did these men make up that record of that train?

A. It was made under the supervision of myself.

42 Q. What is your official position?

A. Chief dispatcher.

74 43 Q. State whether that record was made up under the usual way of making records and keeping them?

A. It was.

44 Q. You may state, if you can from that record, whether there were any stops made by that train after it started from Burwell between that and South Omaha, and follow it through to destination.

Objected to as incompetent, irrelevant, immaterial and there being no foundation.

Objection overruled and exception taken.

A. There was a stop made, in fact the train stopped at all stations and at Aurora the train stopped from 6 P. M. until 7.35 P. M. to take on stock and get the train ready.

Plaintiff moves to strike out the answer as there is no foundation laid and witness is simply testifying from a record and the record is the best evidence, and there is no foundation for the introduction of the record.

Plaintiff asks to examine witness and same is consented to.

By Mr. CLEMENTS:

45 Q. Have you any personal recollection of those facts except from the record?

A. When I pick up a train sheet there is always something that draws my attention to it.

46 Q. You didn't put the figures and words on that train sheet, did you?

A. I may have.

47 Q. Can't you tell by the examination?

75 A. I didn't in this particular instance.

48 Q. What you are testifying to now is from the fact that you find it on the train sheet and not from your personal memory?

A. They are facts.

49 Q. They are statements you find on the train sheet; you are simply testifying to what the train sheet shows?

A. Yes, sir.

Plaintiff now objects to the question as incompetent, irrelevant, immaterial and no proper foundation.

By Mr. DEWEESE:

50 Q. In the making up of that train sheet, for this shipment for instance, July 1st 1905, state to the Court if in your official duty, as train dispatcher, you had to consult the records on that sheet as to the movements of the trains?

A. I did.

Plaintiff moves to strike as leading and suggestive.
Motion sustained.

51 Q. In doing your work as train dispatcher, you may state to the Court whether you direct the movements of the trains on that line?

A. I do.

52 Q. Now in this shipment, July 1st, 1905, what did you consult, if anything, or how did you determine what orders you should give in the movement of this train from Burwell to South Omaha?

Objected to as incompetent, irrelevant, immaterial and assuming that something has been proven that has not been proven.

Objection overruled and exception taken.

76 53 Q. Who was the train dispatcher governing this train leaving Burwell July 1st, 1905?

A. I was the chief dispatcher at that time.

54 Q. State whether that answer covers all these shipments from July 1st, until October?

A. I was. Yes, sir.

55 Q. Who was it that directed the movement of those trains?

A. I did.

56 Q. Now in this shipment, July 1st, 1905, what did you consult, if anything, or how did you determine what orders you should give in the movement of this train from Burwell to South Omaha?

A. I consulted the train sheet.

57 Q. This one you refer to?

A. Yes sir, and the usual report that I get from each station each morning in regard to the movement of cars they wish to move or have ready to move and I determine by that just what trains it will be necessary to run and when to run them.

58 Q. Now from this fact, you have mentioned, are you able to determine in regard to this train leaving Burwell July 1st, 1905, with plaintiff's stock, that the record entries made on that sheet are correct or not, that they correctly show the movements of the train?

A. Yes, it shows the correct movement of the train, with the possible exception that there is always a liability of a few seconds of time at different stations.

59 Q. Are you able to tell from this record what places the train picked up stock on its route from Burwell to South Omaha?

A. Yes, sir.

77 60 Q. Please state where stock was picked up?

Objected to as incompetent, irrelevant, immaterial and no foundation. As the question assumes to ask witness for a fact from a statement from a record and if such fact were proper evidence in a case it is not the best evidence.

Objection sustained.

61 Q. I will ask you what is the number of that train?

A. Train 56.

62 Q. State whether the number of that train changed between Burwell and South Omaha?

A. Yes, sir, it did.

63 Q. At what place?

A. Aurora.

64 Q. What was the number then?

A. It left Aurora as an extra.

65 Q. Can you identify an extra in any way?

A. Yes.

66 Q. Is there anything but the word "extra"?

A. It shows the engine number, the class of engine, the conductor and the engineer.

67 Q. Who was the conductor that went with it from Burwell to Aurora?

Objected to as immaterial and no foundation and, if the witness is testifying from the record, as not the best evidence.

Objection sustained.

68 Q. Who was the conductor on the train that took the stock from Aurora on?

78 Objected to as no foundation.

Objection overruled and exception taken.

A. H. P. Hook.

69 Q. And the number was what?

A. It was an extra train without number.

70 Q. And in what way could you identify this train that carried the cattle from Lincoln to South Omaha?

A. It was an extra train, Conductor, William Thomas.

71 Q. All the way through to South Omaha?

A. Yes, sir.

72 Q. And which way did it go from Lincoln to South Omaha?

A. By the way of Louisville and Fort Crook.

73 Q. Now how much time was consumed in going from Burwell to Aurora?

Objected to as incompetent, irrelevant, immaterial and no foundation.

Objection overruled and exception taken.

A. 8 hours and 45 minutes.

74 Q. And how many miles per hour would that make?

Objected to as irrelevant and immaterial.

Objection overruled and exception taken.

A. In the neighborhood of 12 miles per hour.

75 Q. It was 12 9/10 miles per hour, wasn't it?

Now plaintiff objects to witness referring to any memoranda to refresh his memory until it is properly introduced in evidence.

A. Yes, sir, it was 12 9/10 miles per hour.

76 Q. In reaching 12 9/10 miles per hour state, if anything, what is taken out for stops, and what it is?

79 Plaintiff objects to witness holding in his hand an unidentified record and repeatedly referring to it to refresh his memory, as no foundation.

Objection sustained and exception taken.

77 Q. Are you able to state what, if anything, was allowed for stops and for loading of stock and picking up stock in arriving at this rate of 12 9/10 miles per hour from Burwell to Aurora?

Plaintiff objects to witness holding record in hand.

By the COURT: If he has any independent recollection of that he can answer.

A. I have a personal knowledge that I gained by checking up this sheet is all.

By Mr. CLEMENTS:

78 Q. And that is this record?

A. Yes.

Defendant offers train sheet in evidence, so far as relates to shipment of July 1st, 1905, from Burwell to South Omaha, one line.

Plaintiff objects as incompetent, irrelevant and immaterial.

By the COURT: It may be received.

Plaintiff excepts.

79 Q. You may now point out this line so it can be identified by the reporter.

Defendant offer- the record, marked exhibit "A," separate and apart from the balance of the sheet and asks that a certified copy may be furnished later. Plaintiff objects to the introduction

80 of exhibit "A" as incompetent, irrelevant, immaterial and no foundation.

Objection overruled and exception taken.

80 Q. You may now state whether from this record, made under your supervision and by your direction and in the usual way, you are able to tell what time was deducted, if any, in the movement of the train in the shipment of these cattle, from Burwell to Aurora?

A. Yes.

81 Q. You may now explain what deductions of the time were made and for what purpose?

Objected to as incompetent, irrelevant, immaterial and not the best evidence.

Objection overruled and exception taken.

A. There was a deduction at Wolbach.

82 Q. For what purpose?

A. Getting stock. Getting a car load of hogs for South Omaha.

83 Q. Was there any other deductions?

A. No, sir.

84 Q. You may state how many miles per hour were made in that

shipment of Plaintiff's, July 1st, 1905, from Aurora to South Omaha?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled and exception taken.

A. 20 miles per hour.

85 Q. In ascertaining this 20 miles per hour, from Aurora to South Omaha, state what deductions was made, if any, delays and stops, and if there were any explain what they were and what for.

81 Objected as incompetent, irrelevant, immaterial and not the best evidence, and no foundation.

Objection overruled and exception taken.

A. There was a deduction of one hour and 35 minutes waiting for 6 cars of stock which arrived at 6.20 P. M., after the arrival of train 56, and getting train ready for movement.

86 Q. Was that all?

A. There was a deduction of 23 hours and 15 minutes at Lincoln, during which time stock was unloaded in the yards.

87 Q. Did that include Sunday?

A. It included from 10.30 P. M. Saturday until 8 P. M. Sunday.

88 Q. Were there any other stops deducted?

A. There were not.

89 Q. You may now state whether Lincoln is a division station between Burwell and South Omaha, whether it is a terminal part of the road?

A. Yes, sir, it is.

90 Q. You may state, with reference to Aurora, whether that is a division station or not.

A. It is.

91 —. Now I will ask you whether you have figured the time that it took to make each one of the 25 different shipments, and the number of miles made per hour in the 25 different shipments, from Burwell to South Omaha?

A. I have.

92 Q. You may state whether you ascertained the number of miles per hour for each shipment, making deductions for picking up stock and for stopping at division points, and otherwise, and

82 have reached the number of miles made per hour in that way?

A. I have.

93 Q. I will ask you then to state what number of miles per hour, if you have figured it out, were made on the second shipment referred to in Defendant's petition, leaving Burwell Thursday, July 6th, 1905?

Objected to as incompetent, irrelevant, immaterial and no foundation.

Objection overruled and exception taken.

A. I figured it 16 1/10 miles per hour between Burwell and Aurora and 18 3/10 miles between Aurora and South Omaha.

94 Q. State what number of miles per hour were made in the third

shipment, leaving Burwell July 13th, 1905, between Burwell and Aurora and Aurora and South Omaha.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of witness.

Objection overruled and exception taken.

A. I figured 30 miles per hour between Burwell and Aurora and 18 9/10 miles per hour between Aurora and South Omaha.

95 Q. You may state what number of miles per hour were made, on the same basis as the first shipment, July 14th, 1905, from Burwell to Aurora. The fourth shipment.

A. I misunderstood on that last question. I understood you to say "July 14th."

96 Q. Having misunderstood the date, what was the number of miles per hour on the shipment made July 13th, 1905, between Burwell and Aurora?

83 Objected to as incompetent, irrelevant, immaterial and no foundation.

Objection overruled and exception taken.

A. I haven't my memorandum for the 13th.

97 Q. You figure that up during the noon hour and answer it then.

A. Al- right.

98 Q. You may state what was the number of miles per hour on the fourth shipment, leaving Burwell on the 14th of July, 1905, between Burwell and Aurora?

Objected to as incompetent, irrelevant, immaterial and no foundation, and further object to witness reading an instrument to refresh his memory until it is shown who made it and if it is proper for him to read.

99 Q. You are referring to some memoranda in giving the miles per hour, I will ask you who made that memoranda?

A. I did with the help of Mr. Kooler.

100 Q. One of you put it on the typewriter?

A. Yes, sir.

101 Q. In making that memoranda, state where you got the data?

A. From the train sheets of the different days.

102 Q. Now state what was the number of miles per hour on the fourth shipment, from Burwell to Aurora?

Objected to as incompetent, irrelevant, immaterial and no foundation.

Objection overruled and exception taken.

A. The average was 30 miles per hour.

103 Q. What do you mean by average?

84 A. I figured the actual time consumed between Burwell and Aurora.

104 Q. And then you divide the number of miles by the number of hours?

A. Yes, sir.

105 Q. In that shipment what number of miles per hour were made between Aurora and South Omaha?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled and exception taken.

A. 18 9/10 miles per hour.

106 Q. Now you may state what number of miles per hour were made in the fifth shipment, July 17th, 1905, between Burwell and Aurora?

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

By the COURT: These objections are all overruled with the understanding that a certified copy must be introduced in evidence later on.

By Mr. DEWEESE:

107 Q. Answer the question.

A. 25 miles per hour.

108 Q. I will ask you what number of miles per hour were made in the sixth shipment, July 20th, 1905, between Burwell and Aurora?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled and exception taken.

A. 17 3/10 miles per hour.

109 Q. And what number of miles were made in that same shipment, between Aurora and South Omaha?

85 Objected to as incompetent, irrelevant, immaterial and no foundation.

Objection overruled and exception taken.

A. 18 1/10 miles per hour.

110 Q. What number of miles per hour were made in the seventh shipment, July 21st, 1905, between Burwell and Aurora?

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of witness.

Objection overruled and exception taken.

A. 17 5/10 miles per hour.

111 Q. And what number of miles per hour for that same shipment, July 21st, 1905, between Aurora and South Omaha?

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of witness.

Objection overruled and exception taken.

A. 18 9/10 miles per hour.

112 Q. State what number of miles per hour were made in the eighth shipment, July 24th, 1905, between Burwell and Aurora?

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 20 miles per hour.

113 Q. What number of miles for that same shipment between Aurora and South Omaha?

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

86 A. 18 $1/10$ miles per hour.

114 Q. You may state what number of miles were made per hour in the ninth shipment, July 28th, 1905, between Burwell and Aurora?

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 13 miles.

114 Q. And what number of miles per hour between Aurora and South Omaha for that same shipment?

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 19 $3/10$ miles.

115 Q. You may state what number of miles were made in the tenth shipment, July 31st, 1905, between Burwell and South Omaha?

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 19 $3/10$ miles per hour.

116 Q. And you may give the number of miles for that same shipment between Aurora and South Omaha.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

87 A. 19 $9/10$ miles per hour.

117 Q. You may give the number of miles per hour between Burwell and Aurora that were made in the eleventh shipment, August 7th, 1905.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 18 miles per hour.

118 Q. What number of miles per hour for that same shipment between Aurora and South Omaha?

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 18 $1/10$ miles per hour.

119 Q. You may give the number of miles per hour in the 12th shipment between Burwell and Aurora, on August 10th, 1905.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 16 miles per hour.

120 Q. Give the number of miles per hour for that same shipment between Aurora and South Omaha.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

88 A. 22 1/10 miles.

121 Q. You may give the number of miles per hour for the 13th shipment, August 17th, 1905, between Burwell and Aurora.

Objected to as incompetent, immaterial, irrelevant, no foundation and calling for a conclusion of the witness.

A. 18 6/10 miles per hour.

122 Q. You may give the number of miles per hour for that same shipment between Aurora and South Omaha.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 18 7/10 miles per hour.

123 Q. You may give the number of miles per hour made in the 14th shipment of August 18th, 1905, between Burwell and Aurora.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 14 8/10 miles per hour.

124 Q. And give the number of miles made in that same shipment between Aurora and South Omaha.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 18 8/10 miles per hour.

89 125 Q. Give the number of miles made in the 15th shipment, August 21st, 1905, between Burwell and South Omaha.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 17 6/10 miles per hour.

126 Q. And the number of miles for that same shipment between Aurora and South Omaha?

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 18 $\frac{3}{10}$ miles.

127 Q. You may give the number of miles made per hour in the 16th shipment, August 24th, 1905, between Burwell and Aurora.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 18 miles per hour.

128 Q. You may give the number of miles per hour for that same shipment between Aurora and South Omaha.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

90 A. 28 miles.

129 Q. You may give the number of miles per hour made in the 17th shipment, August 25th, 1905, between Burwell and Aurora.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 14 $\frac{6}{10}$ miles.

130 Q. And the number of miles for that same shipment between Aurora and South Omaha.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 18 $\frac{6}{10}$ miles per hour.

Recess taken for dinner.

1.30 P. M.—Examination continued with same witness on stand.

131 Q. You may now state the number of miles made in the 18th shipment on August 28th, 1905, from Burwell to Aurora.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 23 $\frac{9}{10}$ miles.

132 Q. And the number of miles in that same shipment from Aurora to South Omaha.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

91 Objection overruled and exception taken.

A. 23 miles per hour.

133 Q. Now you may state in the 19th shipment how many miles

per hour were made on the shipment of September 4th, 1905, between Burwell and Aurora.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 20 $\frac{6}{10}$ miles.

134 Q. You may give the number of miles per hour on that same shipment between Aurora and South Omaha.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 19 miles per hour.

135 Q. You may state the number of miles made in the 20th shipment, September 7th, 1905, between Burwell and Aurora.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 24 $\frac{4}{10}$ miles.

136 Q. You may state the number of miles made in that same shipment between Aurora and South Omaha.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

92 Objection overruled and exception taken.

A. 18 $\frac{1}{10}$ miles.

137 Q. You may state the number of miles made in the 21st shipment, commencing on Friday, September 8th, 1905, between Burwell and Aurora.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 12 $\frac{8}{10}$ miles per hour.

138 Q. You may give the number of miles per hour made in that same shipment between Aurora and South Omaha.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 19 miles per hour.

139 Q. State whether during that 21st shipment Sunday, September 10th, was included in the time covered by that shipment between Burwell and South Omaha?

A. The stock laid in Lincoln from 9.20 A. M. until 11.40 P. M.

140 Q. On what day of the week and month?

A. Sunday, September 10th.

141 Q. You may give the number of miles per hour in the 22nd shipment, September 11th, 1905, between Burwell and Aurora.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

93 A. 21 5/10 miles.

142 Q. And the number of miles per hour in that same shipment between Aurora and South Omaha.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 18 2/10 miles.

143 Q. You may give the number of miles per hour that was made in the 23rd shipment, September 21st, 1905, between Burwell and Aurora.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 19 5/10 miles.

144 Q. And the number of miles in that same shipment between Aurora and South Omaha.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 20 miles.

145 Q. You may give the number of miles per hour that was made in the 24th shipment, September 25th, 1905, between Burwell and Aurora.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

94 Objection overruled and exception taken.

A. 16 5/10 miles.

146 Q. And also the number of miles per hour in that same shipment between Aurora and South Omaha.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 18 9/10 miles.

147 Q. You may give the number of miles made in the 25th shipment, October 2nd, 1905, between Burwell and Aurora.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 21 miles.

148 Q. And in that same shipment the number of miles per hour between Aurora and South Omaha.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 20 8/10 miles.

149 Q. Are you ready to give the number of miles made in the third shipment, July 13th, 1905?

A. Yes, sir.

150 Q. You may give the number of miles per hour in the third shipment July 13th, 1905, between Burwell and Aurora.

95 Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 19 4/10 miles.

151 Q. And the number of miles in that same shipment between Aurora and South Omaha.

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. 18 1/10 miles.

152 Q. In giving the number of miles per h-ur in all these various shipments, I will ask you whether deductions were made in each one for time that was used in picking up stock, at different stations, and the stop at the division points at Aurora and Lincoln?

Objected to as incompetent, irrelevant, immaterial, leading and suggestive.

Objection overruled and exception taken.

A. It was.

153 Q. Did you make any deductions where there were no stops for picking up stock or, in other words, were there deductions made in each of these shipments for picking up stock?

Objected to as incompetent, irrelevant, immaterial, leading and suggestive.

Objection overruled and exception taken.

A. There were.

96 154 Q. Do you mean to say that there were deductions made where there were no stops made for picking up stock?

A. I do.

155 Q. Where were they; at division points; at Lincoln and Aurora?

Objected to as incompetent, irrelevant, immaterial, leading and suggestive.

Objection overruled and exception taken.

A. Yes, and in some places at meeting places, in meeting other trains.

156 Q. But I understand you to say that in each shipment there were deductions made for picking up stock?

Objected to as incompetent, irrelevant, immaterial, leading and suggestive.

Objection overruled and exception taken.

A. Yes, sir.

157 Q. And there were deductions made for Aurora and Lincoln?

Objected to as incompetent, irrelevant, immaterial, leading and suggestive.

Objection overruled and exception taken.

A. Yes.

158 Q. Why was it necessary to stop for the passing and meeting of trains?

Objected to as incompetent, irrelevant, immaterial, no foundation and calling for a conclusion of the witness.

Objection overruled and exception taken.

A. It is necessary to have certain turnouts where trains moving in opposite directions can meet and pass. For one thing it is necessary for the traveling public's safety, and it is absolutely
97 necessary to have meeting points in order to avoid disastrous collisions.

159 Q. State what the fact is as to the track between Burwell and Aurora and Aurora and Lincoln, whether it is a single track or a double?

A. It is a single track?

160 Q. And was during all of these shipments?

A. Yes, sir.

161 Q. State where, if any place, these cattle were unloaded, fed and reloaded and shipped on?

Objected to as incompetent, irrelevant, immaterial, no foundation. Objection overruled and exception taken.

A. At Lincoln.

162 Q. And state how you figure the time that was used in thus unloading, feeding, and reloading at Lincoln, whether you counted it or deducted it from the time in getting at the miles per hour.

Objected to as incompetent, irrelevant, immaterial, and no foundation.

Objection overruled and exception taken.

A. I deducted the time from the arrival until the departure.

163 Q. Did that occur at any place other than at Lincoln, in any of these shipments?

Objected to as incompetent, irrelevant, immaterial, and no foundation.

Objection overruled and exception taken.

A. Not to my knowledge.

98 Cross-examination.

By Mr. CEMENTS:

164 Q. Mr. Mullen, were you present in Burwell or any of the intermediate stations, between Burwell and Lincoln, when any of these carloads of stock were shipped, you have testified to?

A. I never have been in Burwell before but may have been on the train with this stock?

165 Q. Do you know?

A. No, sir.

166 Q. Did you have the management of the trains when you were on board of them?

A. Yes, when I am on them I have, I might call up the dispatcher and give some orders—

167 Q. Do you mean to tell this Court that you control these trains, the meeting points, when you are on board?

A. No, sir.

168 Q. You have testified that you controlled all of these trains as chief dispatcher.

A. Yes, sir.

169 Q. Then when you say you were in control on board, that isn't true, is it?

A. No, sir, only, just as I said, I might call the dispatcher up when out on the road—

170 Q. You wouldn't control the management of these trains as chief dispatcher when on board?

A. If I was on the train I would be on to get the train over the road.

171 Q. Were you on these trains?

A. I don't know.

99 172 Q. Then you don't know from your own personal knowledge, by being present, when any of these trains arrived or departed?

A. No, sir.

173 Q. And all you know about these facts is what is reported to you from different points?

A. Of course I have their report and, at the same time, it is necessary for me to line up and make arrangements for the handling of trains.

174 Q. Yes, but you only have the report of the different persons to tell whether they obey or not?

A. Yes, sir.

175 Q. Do you know, as a matter of fact, that you ever did see any of these trains that carried this stock?

A. I don't know.

Redirect examination.

By Mr. DEWESE:

176 Q. From these reports that come in, showing the movements of the trains at different stations, the time they arrive and the time

they left and what they are doing while there, you make up the train sheets, do you?

A. Yes, the operator- at the different offices report right to the dispatcher.

177 Q. And, while at your office, you examine the figures put down on the train sheets to tell where the train is?

Objected to as incompetent, irrelevant, and immaterial.

Objection overruled and exception taken.

A. It is necessary for me to have a close working knowledge of everything that is going on in the office but I don't mean to say that I see everything, but I am looking over sheets most of the time and line up the men for about what I want, and punch up this man or that—

178 Q. And what do you look at the train sheets for?

A. To tell where the trains are, if you didn't have the train sheet you couldn't tell where the trains were.

179 Q. In finding out where these trains are, and getting a basis for getting out orders, as train dispatcher, do you see the figures made from time to time and from minute to minute as they are being made?

A. I see the figures but I don't see them all made. They might put down 25 or 30 figures and I see them all and then I turn around and not see double that many.

180 Q. You, as chief dispatcher, are responsible for them all?

A. Yes, sir.

By Mr. CLEMENTS:

181 Q. Do you mean to say that the 25 car loads of stock that were shipped were unloaded in Lincoln?

A. No, sir.

182 Q. How many were?

A. Two.

By Mr. DEWEESE:

183 Q. Do you mean two cars or trains?

A. Two cars.

184 Q. When any train got to Lincoln on Sunday morning, or any train that was unloaded there, state whether you would just unload one car or two that was in that train?

Objected to as incompetent and immaterial.

Objection overruled and exception taken.

101 A. The stock would all be unloaded unless the owners wouldn't wish it unloaded, and we are governed by their wishes to a great extent.

185 Q. The owner of the stock might express some desire in regard to that. Do you know of any case where only a part of the stock was unloaded and part left on the cars?

A. No, sir.

186 Q. Do you know whether the owner, or some representative owner accompanied these shipments?

A. No, sir, I have no way of knowing that.

Witness excused.

E. BIGNELL, called and sworn as a witness for the Defendant, testified as follows:

By Mr. DEWEENE:

187 Q. What is your business?

A. Superintendent of the Lincoln Division.

188 Q. Burlington road?

A. Yes.

189 Q. How long have you been railroading?

A. Since '71.

190 Q. And how long have you been superintendent and assistant superintendent?

A. Since '91.

191 Q. Does your division, that you have special charge of, include the line from Burwell to South Omaha?

A. Yes.

192 Q. State whether you did have supervision of that line during the year of 1905, which included these shipments?

A. Yes, sir.

193 Q. Do you know how the record of these stock trains, mentioned in the Plaintiff's petition, is made up and kept and who makes and keeps them?

A. Yes.

194 Q. Under whose control and supervision does that work come, or did it come?

A. Chief dispatcher Mullen.

195 Q. The man who has just testified?

A. Yes, sir.

196 Q. Do you know of the manner in which he gave attention to the train sheets, and the making up of the train sheets, and the consultation of the train sheets in the passing of trains, these and others, in effecting their movement?

A. Yes.

197 Q. And how does he ascertain the stops and movements of these trains?

Objected to as incompetent, irrelevant, immaterial.

Objection overruled and exception taken.

A. By the train sheet.

198 Q. Have you personally seen his work and know what he has to do?

A. Yes.

199 Q. How does he do it, whether he does it all himself, personally, or some one else puts it down?

Objected to as incompetent, irrelevant, and immaterial.

Objection overruled and exception taken.

103 A. There are a number of dispatchers to keep the work of a train, the movement, etc., it is Mullen's work to oversee and direct and he is constantly in touch with these men in making these train sheets; that's his record, and the only record he can get as to the arrival of trains.

200 Q. How does he become posted as to their movements?

Objected to as incompetent, irrelevant, and immaterial.

Objection overruled and exception taken.

A. He examines the train sheets personally. And I will further say that he takes reports of trains and puts the time of arrival and departure of the trains on the sheets himself.

201 Q. State whether he puts them all on or whether he directs some by the subordinate?

A. The subordinate does the most of it but they are all under his personal supervision.

202 Q. Could you give some idea of about the number of trains that passes on the lines of railway between Lincoln and Omaha each day during these shipments, during July, August, September, and October, 1905?

A. Yes.

203 Q. You will state about how many different trains, passing in both directions, extras as well as regulars, did pass over that line, back and forth, during that time that I mentioned, how many per day?

Objected to as incompetent, irrelevant, and immaterial.

Objection overruled and exception taken.

104 A. There were six regular passenger trains East bound and five West bound during the twenty-four hours, and then there are a number of sections run that will increase that number. For instance No. 3 out of Omaha, might have two sections. As to the freight trains, there are about six regulars each way and a great many extras so it would be impossible, without going to the records, for me to tell just the exact number that did run, in twenty-four hours, over this track.

204 Q. And in going and coming these trains have to side track in meeting each other?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled and exception taken.

A. It is necessary, of course, to have meeting points and we have a clock system, in order to make it absolutely safe, to hold a freight train a station behind a passenger train so that a freight train, in passing a station, can't pass until the passenger train has passed the station beyond and, of course, the passenger trains are given the preference over all trains.

205 Q. About how many trains were passing, in both directions, between Lincoln and Aurora in these same months, July, August, September and October, 1905?

Objected to as incompetent, irrelevant and immaterial.
Objection overruled and exception taken.

A. There are three regular passenger trains, running both directions, and there were two regularly carded freight trains West and three East and, during the heavy movement of stock, there are more extras than regulars on that line, so that would be another case where I couldn't tell without looking at the records.

206 Q. On that part of the road, between Aurora and Lincoln, state from what states, West, the shipments come from and go to over the Burlington line.

A. Well, from the West they come all the way from the coast in connection with the Northern Pacific, at Billings, that gives a large amount of freight to the Burlington, and East of Billings is a very large stock country, and lots of stock is shipped between there and Grand Island. The business of the passenger trains is the same.

207 Q. Does that include the business of the various branches?

A. Yes, sir, there are two lines into Aurora besides the ones mentioned; the line from Kearney and Denver and then there is the Burwell and Sargeant line into Aurora.

208 Q. The Burwell, Sargent and Hastings lines.

Cross-examination.

By Mr. CLEMENTS:

209 Q. How much of your time was you in the chief dispatcher's office, where Mullen was, during the time covered in these shipments?

A. I couldn't tell exactly by the stock movements. You see my personal attention is in connection with Mr. Mullen and if I am on the line he keeps me posted.

210 Q. Now about how much of that time were you in his office?

A. I couldn't state.

211 Q. A good many times you were out for several days, weren't you?

A. No, sir, I am usually in in the morning, but am out during the day.

212 Q. Your office is separate from Mr. Mullen's, isn't it?

A. Yes, sir.

213 Q. You can't tell what time you were in his office?

A. No, sir, but he is in my office and I am in his a great deal.

214 Q. But the greater part of the time you are not there?

A. I would say that the greater part of the time I am there but as to how much of the time I can't say.

215 Q. You know what he is doing, though?

A. Well, if he wasn't doing something there would be something doing out on the road.

216 Q. You know just what he is doing when you are there?

A. Yes, sir.

217 Q. And know what his duties are when you are gone?

A. Yes, sir, and that he is attending to them.

218 Q. But you don't mean to tell this court that you know what he is doing when you are away?

A. I wouldn't say to the Court whether he is smoking a cigar or not.

219 Q. You refer to trains running in sections, how many run in a certain period?

A. I said I couldn't tell.

Witness excused.

Mr. MULLEN recalled.

By Mr. DEWESE:

220 Q. Please find the record, on the train sheet, of the second shipment in this case, July 6th, 1905; Thursday, July 6th.

107 Please point out the record of that train, on the train sheet so that he may mark it as an exhibit. I will ask you whether the number of the train, that you have designated as starting from Burwell, changed any place between Burwell and the destination, South Omaha, as to making it a different train?

A. They change at Aurora and Lincoln.

221 Q. But by the change of the number of trains I will ask you to state whether the shipment of stock was carried on to its destination, even though the number of the train was different than the number where it started?

A. Yes, sir.

222 Q. Now I will ask you if that same explanation about the shipment you have given for July 1st, 1905, and July 6th, 1905, applies to the manner of handling the trains on the other twenty-three shipments, referred to in Plaintiff's petition, by the changing of numbers of the trains with the destination of the stock to South Omaha?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled and exception taken.

A. Yes, it does, except with the shipment of the second which went via Fort Crook.

223 Q. The change of the number of the trains at Aurora or Lincoln does not affect the route to the destination, whether it was by the Louisville and Fort Crook line or by the Gretna line.

A. No, sir.

Now Counsel for the Defendant states that this introduction of the train sheets for the other 23 shipments can be made if desired but submits that it seems unnecessary to incumber the record

108 by these separate shipments, as shown on the train sheets, since it has been explained that they are all similar in character as the two that have been introduced but if the Court desires all we will introduce them.

By the Court: That is enough.

Defendant offers exhibit "C" in evidence as being an accurate and